Succession

Belgia

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

Under Belgian law there are three main forms of will: **public** or **notarially recorded** wills, **holographic** wills (written out, dated and signed by the testator alone) and **international** wills.

Testators must be capable of expressing their wishes validly and freely (Articles 901 to 904 of the Civil Code).

In principle and save for certain exceptions, agreements as to succession are prohibited.

In a cross-border situation, a will is in principle valid in Belgium if it conforms to the law of the place where it was made (in accordance with the principle ‘ *locus regit actum*’) or one of the other laws specified in the Hague Convention of 5 October 1961.

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

A notary (*notaire*/*notaris*) before whom a public or international will is made, or with whom a holographic will is lodged, has an obligation to register the will in the central register of wills, administered by the Royal Federation of Belgian Notaries (*Fédération Royale du Notariat belge*/*Koninkljke Federatie van het Belgisch Notariaat*). Testators making a holographic will lodged with a notary may decline to have their will entered in the register.

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

Belgian law applies the principle of a reserved portion, under which it is compulsory for a minimum share of the estate (a reserved portion) to go to the surviving spouse, children or father and mother of the deceased, as the case may be.

In the case of children (or descendants), the reserved portion is half the estate where there is one child, two thirds where there are two children, and three quarters where there are three children or more.

Where there are no descendants, the father and mother are each entitled to one quarter of the estate. In that case, however, the entire estate may be left to a surviving spouse.

The surviving spouse always receives at least either the usufruct (the right to enjoy the use and benefits) of half the assets comprising the estate, or the usufruct of the property used as the main residence and its furniture, even if that exceeds half the estate.

If the testator has chosen not to make provision for the reserved portion in his or her will and the heirs agree to respect the testator’s wishes, the will may be applied. However, those whose reserved portion has not been taken into account and who intend to claim it can bring an action for reduction (*action en réduction*/*vordering tot inkorting*).

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

If the deceased was unmarried and had no children, the ascendants and the nearest collateral heirs (brothers and sisters) inherit first. The father and mother each receive a quarter and the brothers or sisters, or their descendants if any, the remainder. If either or both of the parents are deceased, their share passes to the brothers and sisters. If there are no ascendants or brothers and sisters or descendants of brothers or sisters, half of the estate passes to the relatives on the mother’s side and the other half passes to the relatives on the father’s side (uncle, aunt, cousin, etc.).

If the deceased was unmarried and leaves children, these exclude all other members of the family. They share full ownership of the estate in equal portions. However, if a child is already deceased (or declines succession or is debarred from succession) and leaves descendants, the latter will inherit in the place of that child.

If the deceased leaves a spouse and children, the surviving spouse will inherit the usufruct of all the assets comprising the estate. The children inherit the bare ownership in equal shares.

If the deceased leaves a spouse but no children, the surviving spouse becomes the sole heir, provided the deceased has no ascendants or collateral relatives up to the fourth degree. Where the latter exist, the surviving spouse in principle receives the usufruct and the other heirs the bare ownership. However, the portion that the surviving spouse receives in that situation also depends on the matrimonial property regime under which the spouses were married. If the couple were married under a joint property arrangement, the surviving spouse inherits full ownership of the deceased’s share of the joint property.

If the deceased is survived by a partner with whom he or she had entered into a registered partnership, the form of registered partnership recognised in Belgium is ‘legal cohabitation’. In the succession, the surviving legal cohabitant has a right of usufruct of the immovable property used as the joint family home during their cohabitation, together with its furniture. However, the surviving legal cohabitant may be deprived of that right of usufruct by a will or *inter vivos* gift to other persons.

If the deceased is survived by a partner with whom he/she had not entered into a registered partnership – cohabitation without a written agreement (a de facto partnership, not registered), the partner can inherit only if the deceased made provision to that effect in a will. Belgian law does not grant them any automatic right to inherit.

5 What type of authority is competent:

5.1 in matters of succession?

No specific authority is responsible for the succession procedure.

However, the law requires that a notary be consulted in the case of a holographic or international will. Also, in certain situations, the court of first instance (*tribunal de première instance*/*rechtbank van eerste aanleg*) or justice of the peace (*juge de paix*/*vrederechter*) may be required to act, particularly if the succession passes to persons without legal capacity (e.g. minors), if succession is accepted subject to inventory, if succession is vacant, if a possession order (*envoi en possession*/*bevelschrift tot inbezitstelling*) or delivery of a legacy (*délivrance du legs*/*afgifte van het legaat*) is sought, or if settlement/partition is disputed and a notary has to be appointed by the court.

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

Ownership of the assets comprising the estate passes to the prospective heirs purely through the fact of the death.

However, they have a choice: they may accept it unconditionally, or accept it subject to inventory, or decline it.

Succession may be accepted expressly or tacitly. Acceptance is express when a person assumes the title or capacity of heir in a public or private deed. It is tacit when an heir takes action that necessarily implies the intention to accept, and that they would be entitled to take only in the capacity of heir.

Succession may be accepted ‘subject to inventory’ (*sous bénéfice d'inventaire*/*onder voorrecht van boedelbeschrijving*) in accordance with the procedure laid down in Articles 793 et seq. of the Civil Code.
An heir wishing to accept succession subject to inventory must make a special declaration at the **registry** (*greffe*/*griffie*) **of the court of first instance** of the district in which succession is opened, or **before a notary**.
Similarly, succession may be declined by taking a copy of the death certificate to the **registry of the court of first instance** in the place where the deceased was resident and signing a waiver (Articles 784 et seq. of the Civil Code) or doing so **before a notary**.
These declarations must be recorded in a register held at the registry of the place where the succession is opened.

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

See point 7 below.

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

There is no specific procedure (see point 3 above).

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)

Under the Belgian Civil Code, the principle is that the succession passes automatically, without any specific steps being taken.
By the mere fact of a person’s death, their assets, rights and shares automatically pass to their heirs, subject to the obligation to pay the charges on the estate (Articles 718 and 724 of the Civil Code). However, there are exceptions (see point 7 below).
In the case of settlement/partition by the court, the succession will be managed by a notary appointed by the court, and closed by a final scheme of partition (*état liquidatif*/*staat van vereffening en verdeling*). In the case of amicable settlement/partition, a notarial instrument will be needed only for the partition of immovable property.

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

Belgian law is governed by the principle that the entire estate (assets and liabilities) passes to the heirs purely through the fact of the death. However:
beneficiaries of universal legacies created by a holographic or international will must obtain a possession order (*envoi en possession*/*bevelschrift tot inbezitstelling*) from the president of the family court (*tribunal de la famille*/*familierechtbank*) (Article 1008 of the Civil Code);
beneficiaries of individual legacies (Article 1014 of the Civil Code), beneficiaries of legacies by general title (Article 1011 of the Civil Code) and, where there are heirs entitled to a reserved portion, beneficiaries of universal legacies created by a notarially recorded will (Article 1004 of the Civil Code) must apply for ‘delivery of the legacy’ (*délivrance du legs*/*afgifte van het legaat*);
certain categories of legatees must be authorised by a public authority to accept the legacy left to them (e.g. a legacy to a municipality, a body recognised as being of public utility, or in certain cases a foundation or non-profit organisation).

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

The heirs are liable if they accept the succession unconditionally. In that case, they are liable for all the charges and debts on the estate (Article 724 of the Civil Code).
If the heirs accept the succession subject to inventory, they are liable for the debts on the estate only up to the value of the assets they have received (Article 802 of the Civil Code). An heir wishing to accept succession subject to inventory must make a special declaration at the registry of the court of first instance of the district in which succession is opened, or before a notary.
They are not liable if they decline succession by making a declaration at the registry of the appropriate court of first instance or before a notary (Article 785 of the Civil Code).
Furthermore, individual legatees, unlike universal legatees and legatees by general title, are not in principle liable for the debts of the estate (Article 1024 of the Civil Code).

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

The Mortgages Act (*loi hypothécaire*/*hypotheekwet*) of 16 December 1851 governs the publication of immovable property transactions. Article 1 of the Act states that ‘all acts *inter vivos* (whether or not against payment) transferring or declaring rights *in rem* over immovable property, other than liens and mortgages, are to be recorded in a register kept for that purpose at the mortgage registry in the district in which the property is situated’.
Article 2 of the Act states, on that point, that ‘only judgments, official deeds and private deeds, recorded by a court or executed before a notary, will be registered. Powers of attorney for such instruments must be provided in the same form’.
The Mortgages Act of 16 December 1851 does not govern the transfer of ownership by death.
It does however require registration of deeds of partition (*actes de partage*/*akten van verdeling*). In that case, all heirs, whether or not they are inheriting immovable property, will be identified in the deed to be recorded in the mortgage registers. The same applies to the public or private sale of immovable property undivided between heirs.

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?

In principle Belgium does not have a system for the administration of estates.
Nevertheless, Article 803*bis* of the Civil Code states that heirs who have accepted subject to inventory may decline responsibility for the administration and distribution of the estate. They must first request the president of the family court to appoint an administrator to whom they will hand over all the assets of the estate, who will be responsible for settlement of the estate in accordance with certain rules.
In addition, Article 804 states that, if the interests of the creditors of the deceased or individual legatees might be jeopardised by the negligence or financial situation of a beneficiary heir, any of the parties concerned may have him or her replaced by an administrator with responsibility for settling the estate, appointed by interim order (*ordonnance rendue en référé*/*beschikking in kort geding*), the heir having been consulted or previously given notice.
In addition, the testator may appoint an executor to ensure that the will is properly executed.

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

See previous question.

9.3 What powers does an administrator have?

Administrators appointed in accordance with Articles 803*bis* and 804 have the same powers as a beneficiary heir. They are subject to the same obligations as an heir. They are not required to provide security.

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?

Proof of a person's status as an heir is provided by an affidavit (*acte de notoriété*/*akte van bekendheid*) or more commonly by a certificate of inheritance (*certificat d'hérédité*/*attest van erfopvolging*) or deed of inheritance (*acte d'hérédité*/*akte van erfopvolging*). A certificate or deed of inheritance is issued by a notary or, in some circumstances, by the collector for the estate duty office competent to receive the declaration of succession for the deceased (Article 1240 *bis* of the Civil Code).
A notarial document (*acte notarié*/*notariële akte*) is a document that reflects the truth. It has probative value: the declaration made by the notary drawing it up is deemed to be accurate. The notary attests certain facts by stating the identity of the persons appearing before him or her and certifying the information they are asking him or her to record. The notarial document is authentic evidence of its content. Furthermore, such a public document has an incontestable date. Statements protected by such authenticity can be proven false only by proceedings to contest their accuracy (*inscription de faux*/*betichting van valsheid*).

This web page is part of Your Europe.
We welcome your feedback on the usefulness of the provided information.

Last update: 14/12/2020