

A brief outline of French succession and property law

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1. Succession and Property Law

A – Domicile

Domiciled (habitually resident) in France at time of death

= all of your worldwide assets (except for ‘real’ property - land and buildings - outside France) will be subject to French succession law, i.e. the rights of « protected heirs » (*héritiers réservataires*).

Not domiciled in France at death

= the protected heirs legislation still applies, but only to real property located in France.

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B- Disposable and reserved portions

Assets on death consist of the reserved portion (*reserve légale*) and a disposable portion (*quotité disponible*).

The reserved portion must go to the protected heirs, regardless of the wishes of the deceased.

Reserved portion

One living child = half of the estate

Two such children = two-thirds divided equally between them.

Three or more = three-quarters divided equally between them.

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B- Disposable and reserved portions

If a child predeceases the parent, the share attributable to the deceased child is distributed equally among the children of that deceased child, if any. Otherwise, the share goes to the surviving children.

Parents

As from 1st January 2007, in the event that there are no children, but there is a surviving spouse, then the spouse is able to take all of the deceased's estate, in preference to the deceased's parents, which was previously the case.

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D - Second marriages

Frequent issue - children from previous marriages who do not get on with their new stepfather or stepmother.

On the death of the first of the couple, the survivor will own the property together with the children of the partner's former marriage.

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E – Property ownership

There are two ways jointly to own French property:

- (i) - *en indivision* (tenancy in common); and
- (ii) - *en tontine* (which is similar to a joint tenancy under English law).

(i) Ownership *en indivision*

Each partner owns their own half (or other percentage) of the house, which on their death devolves according to French succession law.

Thus, the protected heirs have rights over and above the surviving spouse against the deceased's share.

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E – Property ownership

(ii) Ownership *en tontine*

If a property is owned *en tontine* the entire property will pass to the survivor, as if it were owned in the survivor's sole name from the moment of purchase.

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E – Property ownership - Mr and Mrs A - Indivision case study

Mr and Mrs A are married, with one child.

Mr A had previously been married and had three children from that marriage. Mr A dies.

As the jointly owned house is held *en indivision*, French succession law dictates that his half of the house has to be shared as to three-quarters to Mr A's four children, and a quarter to Mrs A. Thus, Mrs A now owns her half plus a quarter of the remaining half; a total of five-eighths.

Mrs A now owns her house together with her child and the children of her husband's former marriage.

If the property is the matrimonial home of the couple, the surviving spouse can have the right to continue to occupy the property by taking a life interest (usufruit).

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E – Property ownership - Mr and Mrs A - Tontine case study

If the jointly owned property had been held *en tontine*,

upon Mr A's death, his share would have gone automatically to Mrs A. Mr A's children would not have received an interest.

It is possible for the children to seek redress from the courts, if they believe that they have been intentionally defrauded from their inheritance, but such an action can be expensive and non-French children rarely do so.

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E – Property ownership - Indivision / Tontine – points to remember

Tontine clause can only be inserted at the time of purchase

Sale of a property when both parties to the *tontine* clause are alive is only possible if both consent; if one declines to sell, the other cannot force the sale. In the event of a matrimonial dispute, this can cause grave problems.

The moral claim of the children of the first deceased is thwarted. If the surviving spouse leaves some of the property to those children the tax rate is very high (60%) as the children are not blood relations of the surviving spouse.

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E – Property ownership - Indivision / Tontine – points to remember

The surviving spouse can take a life interest (*usufruit*) over the whole property instead of or in addition to owning a quarter the deceased's share of the property.

The children cannot then sell against the surviving spouse's will as the French Civil Code states that the court may not sell the freehold of a property charged with a life tenancy against the wishes of the life tenant.

2. Brief information on succession taxes

- French inheritance tax is paid by the individual beneficiaries, rather than by the estate.
- There is now no inheritance tax payable between surviving spouses (or those joined by a PACS).

2. Brief information on succession taxes

- For other beneficiaries (e.g. children) there is a threshold of 159,325 EUR. Above this, tax is payable as per the following table:-

2. Brief information on succession taxes

Net taxable amount	Tax rate
Up to 8,072 EUR	5 %
Between 8,072 EUR and 12,109 EUR	10 %
Between 12,109 EUR and 15,932 EUR	15 %
Between 15,932 EUR and 552,324 EUR	20 %
Between 552,324 EUR and 902,838 EUR	30 %
Between 902,838 EUR and 1,805,677 EUR	40 %
Above 1,805,677 EUR	45 %

Any questions?

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