



Settling

an estate

After their death, a person's estate passes to their heirs.
The law states the deceased's heirs.

However, it is possible to arrange or change this instruction by designating a "beneficiary" in a will. However, the rights of children or spouses must be taken into account in certain situations (to protect their "reserved portion").

What is the reserved portion?

The Civil Code ensures that certain heirs (children and, in some cases, the spouse) have a right to a minimum share (the "reserved portion") of the estate of their deceased relative or spouse.

If there is one child, the reserved portion consists of half of the property, 2/3 if there are 2 children and 3/4 if there are 3 children or more.

The spouse is entitled to a reserved portion of 1/4 of the estate in the absence of a child of the deceased.

As for settlement, the heirs have several possible choices, called "estate options".

A necessary precondition: the option

What are the possible estate options?

- Outright acceptance,
- Net value asset acceptance,
- Refusal.

Each of these options has different consequences.

The choice can only be made after death. It cannot be made beforehand.

Who can choose?

Each heir or beneficiary, in their personal capacity, makes their own choice. Thus, an heir or beneficiary may accept their share of the estate if another refuses theirs.

When a person is both an heir and a beneficiary, they must make a decision concerning their share in the estate and their inheritance. They may choose a different option for each.

If an heir dies before declaring their decision, their own heirs shall each have a separate option. They can therefore make different choices.

How long can the decision take?

The heir may make their choice as soon as the estate is open (upon death).

however, they have a period of 10 years (compared to 30 years for deaths occurring before 1st January 2007) to make their decision.



Warning

if no option is chosen within this period, the heir is considered to have refused the estate.

The 10-year term only begins upon the death of the surviving spouse when the heir has left the latter property from their relative's estate.

Forced heirship - Four months after death (never before), a creditor or a co-heir may, by bailiff's deed, require an heir who has not yet declared to make a decision. They then have two months to make a decision (unless legally extended).

If no decision is made within this time, the heir is considered to accept outright.



Warning

Tacit acceptance - As long as the heir has not been forced to make a decision, they retain their free choice, but their conduct may deprive them of:

- if they conduct themselves as an accepting heir (using the deceased's bank account, selling furniture which is part of the estate, signing a mandate to sell property, etc.) ;
- if they are guilty of concealing estate property or concealing a coheir.

In both cases, they are then considered to be an heir accepting outright.

What does the option cover?

The option is indivisible - the option covers all rights to the estate. The heir cannot limit their choice to a certain good.

One exception is possible: ring-fencing - for the beneficiary, as part of an estate opened since 1st January 2007, they can limit their right ("to limit their fee") to a part of the property to which they were entitled. However, this is only possible if the testator has not prohibited it and the estate has been accepted by at least one heir. The same right exists for the benefit of the surviving spouse if there is a descendant(s) of the deceased when they benefit from a living donation or a will. The settlor may, however, forbid this ring-fencing.

What is outright acceptance?

It means accepting estate assets and liabilities

An heir who accepts outright becomes the owner of the property of the deceased for the part they inherit. They must also pay all the debts of the deceased in the same proportion and if necessary with their personal equity.

Accepting expressly or tacitly?

Acceptance may result:

- from an act where the heir declares that they accept. This acceptance is called express;
- the accomplishment of an act that suggests their intention to accept. This acceptance is said to be tacit (examples: agreeing to sell a property of the estate and receive the profit, moving all or part of the furniture).

Protective measures

Certain acts are regarded as purely "protective", and their sole purpose is to preserve the deceased's estate. They can be carried out without the representative being considered an accepting heir. However, they must prove that they have not acted in such a capacity.

The following are considered protective measures:

- payment of funeral and medical expenses, taxes owed by the deceased, rents and urgent debts.
- collection of income from the deceased's property or the sale price of perishable goods. The representative must prove that the amount collected was used to settle an estate debt or was filed with a notary or was recorded.
- actions intended to avoid increasing estate debts, in particular current measures necessary for the continuation in the short term of the activity of a company and the renewal, as lessor or tenant, of leases which, if not renewed, would require the payment of a fee.



Warning

All other measures must be authorised by the judge.

Is the option irreversible?

Please note, the option chosen is irrevocable: the heir who accepts the estate outright cannot reverse their decision. However, the law has introduced a restriction: the heir may be legally freed from obligation to pay all or part of an estate debt if they had a legitimate reason for being unaware of it at the time of accepting the estate. The settlement of this debt must also have the effect of seriously impoverishing their personal wealth.

The heir must then take legal action within 5 months of the day they became aware of the existence and amount of this debt.

What is Net Asset Value Acceptance?

The heir has the option of net asset value acceptance if the known or supposed debts may exceed the assets left by the deceased. In choosing this option, the heir will not be liable to pay the deceased's debts with their personal wealth. This is the preferred option in case of serious doubt over the amount of the deceased's liability, as the procedure is cumbersome and restrictive.

Express option

For net asset value acceptance, the heir must make a declaration to the secretariat to the Clerk to the Tribunal de Grande Instance (District Court) in the area of last domicile of the deceased. This declaration is recorded in a register kept for this purpose.

This option is the subject of various national and local advertisements (boDacc and legal notices) at the expense of the estate.

Main effects

When certain heirs have accepted the estate outright and others as net value assets, the rules specific to this option are binding on everyone until apportioned.

The heir who accepts the net value assets is only liable for the payment of the estate debts up to what they receive in the estate.

Taking an inventory

The heir is obliged to have an inventory drawn up by a notary, an auctioneer or a bailiff.

The inventory must be filed with the District Court at the latest within 2 months of filing this declaration.

The heir may ask the judge for additional time if they can prove serious and legitimate reasons which delay the filing of the inventory. If they do not file it within the prescribed time, the heir is deemed to have accepted outright.

Settlement of debts

Estate creditors and beneficiaries of sums of money may consult the inventory or obtain a copy from the court and ask to be notified of any new advertising, if there is an additional inventory.

Within 15 months of the publication of the declaration of net asset acceptance, the heir may sell the estate assets or declare to keep one or more of them. They must inform the court of their decision within 15 days.

If they keep a property, they must pay the creditors the value set in the inventory.

Property that the heir does not want to keep will be sold by mutual (amicable) agreement without prior authorisation.

The heir must pay the value set in the inventory or the sale price to the creditors within 2 months of:

- The declaration of keeping a property;
- or the day the price is available.

Creditors benefiting from guarantees taken on the property (e.g.: a mortgage) are paid as first priority. Others will be paid according to the date the claim is declared.

Any creditor may challenge before the judge the value of the property retained or the price if sold. If the challenge is upheld by the judge, the heir will be required to pay the difference in value from their personal property. If they have retained the property, they may choose to return it to the estate.

Accounting

The heir who chose the option is responsible for administering the property they collect in the estate. They will keep accounts of its management, the debts that it deals with and the operations relating to the property collected or which diminish their value.

They must present their accounts to any creditor who requests them. They must respond within 2 months to any summons from a creditor asking them to reveal the location of the property and rights collected from the estate that have not been sold or retained. Failing that, they may see their personal property withheld.



Warning

The heir is responsible for any misconduct in their administration.

This option is revocable within a certain time period

The heir may change their mind if they find that the estate has a surplus and accept it outright. However, they can no longer refuse.

What is refusal?

Express option

The heir who wishes to refuse the estate must make a declaration to that effect to the clerk of the district court of the last domicile of the deceased.

A reason does not have to be provided for refusal.

This option is revocable under certain conditions

Revocation of refusal is possible under two cumulative conditions:

- the estate must not have been accepted by another heir;
- the death must have occurred less than 10 years previously (30 years for a death prior to 1st January 2007). Beyond that, the right to choose is no longer valid.

The heir's refusal is then deemed never to have existed. However, measures that have been drawn up in good faith for the benefit of third parties by persons other than the heir (including the trustee with the estate without heirs) between the death and the withdrawal of the refusal are deemed to have been validly drawn up.

Effects of refusal

An heir who refuses is supposed to not have inherited. They receive no property. they are therefore not required to pay the estate debts and expenses, but remain liable for the payment of the funeral expenses of an ascendant (father, mother) or descendant (child).

Private beneficiaries can only accept outright or refuse the bequest, while universal and residual beneficiaries also have the option of net asset acceptance.

Floyd Law will support you in your choice.

Meeting with the notary

How to choose a notary?

There is a free choice of notary and is not limited geographically.

Heirs may, by mutual agreement, entrust settlement of the estate to a notary of their choice.

In the absence of agreement, the rules of the notarial profession establish an order of priority:

- the notary of the surviving spouse,
- the notary of the rightful heirs,
- the notary of the universal legatees,
- the notary of non-rightful heirs,
- in the case of equal rank between the 3 previous levels, the notary representing the largest interest.

The settlement of the estate is ensured by one notary, each heir may also be assisted by their own notary.

Who can engage the notary?

Any person having an interest or holding documents necessary for the settlement of an estate.

The notary only communicates information and copies of documents relating to the estate to the heirs and legatees (they are bound by professional secrecy).

Documents to be provided to the notary

At the notary's request, the heirs must provide them with various documents, specifically:

Those relating to the deceased - the death certificate extract or the judgement establishing the date of death, family record books, marriage certificate and changes to the matrimonial property regime, the PACS agreement, the separation order or divorce decree, will and gift between spouses, where they exist.

Documents relating to the surviving spouse, heirs and legatees

- Family books, copy of the marriage contract, PACS agreement or divorce decree, if applicable, copy of both sides of an identity card, passport or residence card.

Documents relating to the assets - the references for booklets for savings accounts, personal and joints bank accounts or investment accounts, the list of stock values (name, address of the banks and brokerage companies), policies of life insurance, death insurance, property insurance, pieces of art and jewellery insurance, pensions and retirement (last pay slip), property deeds, valuation of buildings and the details of the trustee, commercial mortgage (state of equipment and goods, etc.), a copy of rental contracts, the amount of the rent and details of the administrator (if the deceased was a landlord), a list of donations granted by the deceased and copies of the acts, vehicle registration, the statutes of societies in which the deceased owned shares and the details of their accountant, the list of works resulting in the earning of royalties, a copy of the solidarity tax on wealth (IFI) statement, etc.



Warning

When the spouses are married under a common property regime, not only must the personal accounts of the deceased be declared, but also those of the surviving spouse.

Documents relating to liabilities - tax notices (on income, ISF, property tax, housing tax), funeral expenses, water bills, EDF-GDF (electricity & gas), telephone, rent payments (if the deceased was a tenant), co-ownership fees, loans and sureties, information concerning the possible recovery of certain social benefits, expenses of last illness, documents for all the deceased's other debts, etc.

Documents relating to separate property - if the spouses are married under a common property regime, property acquired before marriage or received through donation and inheritance during the marriage is called separate property. To justify the rights of each of the spouses, the notary must be provided with: the deed of division of the estates collected by the spouses, the copy of the declarations of inheritance collected (name and address of the notary who settled them); a copy of the donations received during the marriage, the list of works paid by the community for the property.

The probate document drawn up by the notary

The notary will support the heirs at this difficult time, in order to draw up, in the heirs' best interests, all the acts allowing them to collect the property which is left to them in the inheritance. These acts guarantee their legal security.

The minutes of opening and describing the will

The notary handling the estate must search for the existence of a will. To do this, they systematically search the Central Registry of Wills (FCDDV) kept by notaries, which will allow them to find any will given to another notary.

Deed of Public Identity: the heir's passport

The notarial certificate indicates the identity of the heirs and their rights in the estate. This act makes it possible to justify one's status as heir to various bodies and to carry out the necessary formalities to obtain the release of the deceased's personal bank accounts (which are blocked as soon as the bank is informed of the death).

Inventory: a photograph of the assets

The inventory of the estate includes an estimate, item by item, of assets and liabilities. It is drawn up by a notary, an auctioneer or a bailiff.

What does the inventory contain?

The inventory includes the heirs, the analysis of title deeds and supporting documents, the description and estimated value of the assets and liabilities.

When is an inventory needed?

- In the event of an uncertain situation: when the liability may exceed the assets and the heir accepts the net value of the assets,
- to estimate the real value of property in the context of a tax inheritance declaration, in this case an auctioneer is generally asked to provide an estimate,
- to allow the common property spouse to be responsible for only half of the debts that their spouse incurred alone (Article 1483 of the Civil Code),
- in the presence of heirs who are minors. The absence of an inventory means that goods left to a minor are ceded to their legal representative (parent) or guardian (article 386 of the civil code),
- in the presence of incapacitated persons or absent heirs, to ensure the protection of the heir in question,
- in the event of a usufruct bequest, unless the deceased has freed the legatee from this obligation,
- in case of acceptance up to the net value of assets.



Warning

When an heir accepts the estate up to the net value of assets, the inventory must be drawn up and filed in court no later than 2 months from the declaration of option (unless extended by the judge) (see page 5).

Closing the inventory

It contains the oath taken by the heirs, in the hands of the notary, that all the property arising from the estate or the marital estate, appear in the inventory and with affirmation that no property has been omitted or concealed. The closing is mandatory and must take place within 5 years of the date of death.

The certificate of transfer (or ownership): the title of the movable property

This certificate establishes the transfer of ownership of property to an heir or a legatee. In particular, it will allow you to transfer company shares or a vehicle registration certificate into the name of the heirs.

In case of resale of a vehicle arising from the estate within 3 months of death, it is not necessary to have a new registration certificate issued in the name of the heirs. A simple certificate of ownership will save the cost of drawing up this card.

Vesting Assent Document: title of property ownership

A property certificate constitutes the title of ownership of the heirs for a property arising from the estate. It must be published with land registration services within 6 months of the death.

Estate Duty Return: a tax obligation

The tax inheritance declaration is a snapshot of the deceased's assets (assets and liabilities) on the date of death. It must be filed in the tax office of the deceased's domicile within 6 months of their death (plus the current month) or within one year in the event of death abroad.

Here the notary indicates the assets (goods) and deductible liabilities. They will then calculate any inheritance tax owed by the heirs which must be paid at the time of lodging the declaration. Delayed or split payment solutions exist. Ask your notary.

Partition: the division of property

Division makes it possible to attribute in kind to each of the heirs the part which belongs to them in the estate. This is not systematic, especially when the heirs want to keep the property of the estate together (this is called "joint property").

Floyd Law will be your independent, chosen partner throughout the estate and the Probate process, accompanying and advising you, always in your best interests.