Succession

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European Judicial Network (in civil and commercial matters)

Netherlands

This factsheet was prepared in cooperation with the Council of the Notariats of the EU (CNUE).

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

A will can be drawn up only by notarial deed (notarial will) (*notariële akte (notarieel testament)*) or by handwritten private deed handed to a notary for safekeeping in a deposited will (*depot-testament*) (Article 4:94 of the Civil Code (*Burgerlijk Wetboek*). A limited number of exceptions are made in special cases (Article 4:97-107 of the Civil Code). A joint will (*gezamenlijk testament*) is not accepted (Article 4:93 of the Civil Code). An agreement concerning a future inheritance is also not accepted. According to Article 4:4(2) of the Civil Code, agreements intending to dispose, in whole or in part, of a not yet devolved estate are null and void.

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

The notary who draws up the will must register the information on the following working day in the Central Register of Wills (Centraal Testamenten Register (CTR)).

See also: http://www.centraaltestamentenregister.nl/. Information on safekeeping, registration and searching for a will is also available on the website of the European Network of Registers of Wills Association (ENRWA) in the 'Information sheet' section: http://www.arert.eu/

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

The descendants of the deceased (children or – if the children have already died – their children) cannot be completely disinherited. They are entitled to a reserved share (*legitieme portie*). Neither the spouse nor the ascendants are entitled to a reserved share. The reserved share amounts to half of the estate, see Article 4:64 of the Civil Code. If a descendant invokes their reserved share, they will no longer be considered as an heir (*erfgenaam*) but as a creditor (*schuldeiser*) of the estate.

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

In the absence of a will, the following principles are applicable to the various scenarios:

If the deceased was unmarried and had no children, in principle the parents, brothers and sisters inherit in equal shares, with each parent always inheriting at least a quarter-share.

If the deceased was unmarried and there are surviving children, the estate is divided equally among the children.

If the deceased is survived by a spouse and there are no surviving children, the last surviving spouse inherits the entire estate.

If the deceased is survived by a spouse and children, the children and the spouse inherit in equal shares, but the surviving spouse by law acquires the assets of the estate. Winding up the estate is the responsibility of the spouse. Each of the children will, in their capacity as heirs, be legally entitled to a monetary claim (*geldvordering*) on the surviving spouse. The monetary claim corresponds to the child's share in the estate. This claim becomes enforceable if the surviving spouse is declared bankrupt or is placed under debt restructuring (see also the Natural Persons Debt Restructuring Act (*Wet schuldsanering natuurlijke personen*)) or if they die (Article 4:13 of the Civil Code). In some situations, children can also enforce their monetary claim earlier, for example if the surviving spouse remarries.

Married spouses and registered partners are treated equally.

5 What type of authority is competent:

5.1 in matters of succession?

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

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

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

The notary is the competent authority in the Netherlands with respect to inheritance law. The parties are free to choose a notary regardless of the deceased's last place of residence.

The heir has three options:

1. accept the succession unconditionally;
2. accept the succession under benefit of inventory, limiting liability for debts to the value of what is inherited (*beneficiair aanvaarden*);
3. waive the succession.

If the heir wishes to accept the inheritance outright (unconditional acceptance), they may do so implicitly and without specific formalities by performing certain actions, such as selling or otherwise appropriating the deceased's assets. The consequence of unconditionally accepting the succession is that the heir is personally liable for the debts of the estate with their own assets. The heir can limit this liability by expressly accepting the succession on condition that the debts of the inheritance do not exceed its value. The heir does so by making a declaration of acceptance under benefit of inventory (*verklaring van beneficiaire aanvaarding*) to the court registry (*griffie van de rechtbank*). The heir must also do this if they do not wish to receive the succession and wish to waive it. These declarations are not subject to any time limit, but a creditor or other interested party may request that the court impose a time limit on the heir. If the heir allows this time limit to expire, the inheritance is unconditionally accepted. This is also the case if the heir behaved as though they had unconditionally accepted the succession, prior to making a declaration. A choice once made cannot be reversed.

Legacies (*legaten*) can be accepted or refused without specific formalities. Under Dutch law, limited acceptance is not possible for legacies.

A forced heir (*legitimaris*) can waive their right to the reserved share simply by not claiming it. The law does not stipulate any specific declarations for this purpose. If forced heirs waive their reserved share, it is possible to record this in a declaration.

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)

In most cases, especially if there is a marriage contract (*huwelijkscontract*) or a will, it is advisable to engage a notary to wind up the estate. Each of the heirs or an executor (*executeur-testamentair*), if one is designated in the will, can engage a notary in the Netherlands. The parties are free to choose a notary regardless of the deceased's last place of residence. The notary will assist the heirs to settle the estate. They will establish/determine who the heirs are, before checking whether a will has been drawn up and informing and advising the beneficiaries on the consequences of accepting or refusing the inheritance. The notary may also assist them in complying with their tax obligations. Only in a few situations does the court play a role in winding up successions. This may occur if winding up the estate is disputed or if one of the heirs (for example because they are a minor) is unable to look after their own interests.

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

In the Netherlands, no provision is made for any court procedure. If there is no will, the law determines who the heirs are. If there is a will, it indicates who the heirs and legatees (*legatarissen*) are. The notary may indicate who the heirs to the estate are in a certificate of succession (*verklaring van erfrecht*), see Article 4:188 of the Civil Code. The executor of the will can also ask for a certificate of succession. In the certificate of succession, the notary has the authority to identify the persons who are entitled to the inheritance, their share in the inheritance and, if applicable, the name of the executor. By means of the certificate of succession, the heirs/executor can identify themselves to the debtors of the estate and they will be able to obtain disposal of the bank balances, etc. A notarial deed is necessary for the transfer of immovable property or a right in an immovable property to one of the heirs.

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

If the heir has unconditionally accepted the inheritance, they are fully liable for the debts of the deceased (Article 4:182 of the Civil Code). If the inheritance is accepted under benefit of inventory, the heir is liable for the debts only in so far as these are covered by the gains from the estate. They are not personally liable.

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

The certificate of succession can be recorded in the public register of immovable property (*openbaar register van onroerend goed*). For the transfer of title to immovable property or rights in immovable property, a separate notarial deed is necessary.

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?

Dutch law does not provide for the mandatory appointment of an administrator of the estate (*beheerder van de nalatenschap*).

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

Testators (*erflaters*) can designate an executor in their will, who can wind up the estate. In the case of acceptance under benefit of inventory, a special administrator (*speciale beheerder*) may be appointed by the court.

9.3 What powers does an administrator have?

The executor named in the will normally has limited powers in accordance with Article 4:144 of the Civil Code. They can administer the estate and settle the debts of the estate. Testators can give the executor more rights, for example the transfer of assets in the estate without permission from the heirs. If the executor is appointed as a special executor (*speciale executeur*) (the trustee winding up the estate (*afwikkelingsbewindvoerder*)), they can transfer assets and take all decisions concerning the division of the estate.

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?

A deed of division (*akte van verdeling*) can be concluded by the heirs. The document becomes a notarial deed if it is drawn up by the notary. This is required where an heir has legal incapacity (on account of being a minor or on account of receivership /judicial administration (*curatele/bewindvoering*). A notarial deed is necessary for the transfer of immovable property or rights in immovable property in the Netherlands, see reply to question 7 above. In all other cases, a deed of division of the estate is not required. The certificate of succession is sufficient for the transfer of assets, such as bank accounts and other movable property.

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