

[Home](#) > ... > [Family Matters & Inheritance](#) > [Inheritance](#) > [Adapting Rights In Rem](#) > [Austria](#)

Adapting rights in rem



Content provided by:



European Judicial Network
(in civil and commercial
matters)

1 Which are the rights in rem that could arise from a succession under the law of this Member State?

Under Austrian law, after death the estate as a legal person continues the legal status of the deceased (Section 546 of the Austrian Civil Code – *Allgemeines Bürgerliches Gesetzbuch* – ABGB). When the estate is devolved (*Einantwortung*), the heir takes over the legal status of the estate. The same applies to decisions ordering the estate to be appropriated by the Federal Government (Section 547 of the Austrian Civil Code). Nobody may take over ownership of an estate without proper authority. An estate is generally acquired following probate proceedings through devolution, i.e. the transfer of legal ownership to the heirs (Section 797 of the Austrian Civil Code).

2 Are these rights in rem recorded in a register of rights in immovable or movable property and, if so, is such recording compulsory? In which register(s) are they recorded and what are the registration requirements and procedure?

Under Austrian law, the acquisition, transfer, limitation and revocation of rights in rem (ownership, easement, land charge, lien, construction rights) of properties must be recorded in the land register managed by the district courts (*Bezirksgerichte*) to take effect. The right of resale, the right of first refusal and the right of ownership may be converted into rights in rem by entry in the public registers.

Despite this principle of registration, an heir acquires rights in rem to a property as soon as the entry becomes final and not only when their right of ownership is entered in the land register. Entry in the land register is therefore merely declaratory in nature. However, the provisions in Section 21 and 94 of the Land Register Act (*Grundbuchsgesetz*) prevent actual ownership rights from being taken into account in dealings relating to the land register if they are not reflected in that register. An entry against the (not yet registered) heirs is therefore, with few exceptions, inadmissible, even if they are already property owners under substantive law. With regard to entries in the land register, the fact that devolution has taken place should consequently not be taken into consideration until the heirs' ownership rights are recorded in the register.

In Austria, heirs' rights are registered under the land register amendment process governed by Section 136 of the Land Register Act. This involves correcting the land register so that it reflects the actual legal situation. This occurs when legal changes have subsequently been made but have not yet been implemented in the land register. Registration is therefore merely declaratory in nature. Under the process covered by Section 136 of the Land Register Act, 'proof of inaccuracy' is enough to warrant registration; this replaces the documents that would otherwise be required. This proof is provided if the inaccuracy is manifest or demonstrated by means of authentic instruments (such as a certificate of devolution issued by the court or a European Certificate of Succession). An inaccuracy is considered manifest, for example, if the repeated transfer of rights not recorded in the land register referred to by the applicant and the ensuing universal succession to the property by the legal

predecessor result directly from the law.

Entries are made in the land register at the request of the parties. Entries can be made by the authorities only in exceptional cases which are not applicable here.

3 Which effects are linked to the registration of the rights in rem?

Contrary to the registration principle described in point 2, under Austrian law universal succession by the heir takes place without registration in the land register when devolution comes into effect. Registration in the land register is therefore merely declaratory in such cases.

4 Are there specific rules and procedures in place for the adaptation of a right in rem to which a person is entitled under the law applicable to the successions in case the law of the Member State in which the right is invoked does not know such right in rem?

Under Austrian residential property law, the minimum share inextricably linked to the residential property must not be shared while the residential property exists unless there is an 'owner partnership' (*Eigentümerpartnerschaft*). This is a legal community of two natural persons who are co-owners of the residential property.

If a number of people have acquired ownership of the minimum share through succession without forming an owner partnership, for example if the estate has been settled abroad and legal succession involves several persons, their property cannot be recorded in the land register. If an application for registration of property rights is made, the Land Register Court (*Grundbuchgericht*) must reject the application, inform the applicants that the rights cannot be recorded in the land register as requested and give them a reasonable period to arrange acquisition of the minimum share by a single person or an owner partnership. If this period expires and no such arrangements have been made, the Land Register Court must arrange for a public sale (Section 12(3) of the 2002 Residential Property Act - *Wohnungseigentumsgesetz*).

■ Last update: 15/05/2026

The national language version of this page is maintained by the respective EJM contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJM nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.