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# Restrictions on successions – special rules

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European Judicial Network  
(in civil and commercial matters)



1 Under the law of this Member State, do special rules impose, for economic, family or social considerations, restrictions concerning or affecting the succession in respect of immovable property, certain enterprises or other special categories of assets located in this Member State?

In France, there are special rules that derogate from the ordinary law on succession both in relation to the order of succession (*dévolution successorale*) (1) and the sharing-out of the estate (*partage successoral*) (2).

## 1. Special rules on the order of succession

Order of succession is a mechanism by which the persons who will inherit the estate of the deceased are designated.

Special rules on the order of succession have been laid down by French legislation and case law to take account of the specific nature of certain assets. They apply to the following assets:

### *Family heirlooms*

The special rules relating to family heirlooms (*souvenirs de famille*) have been established by case law.

Family heirlooms are family objects whose value is principally personal and subjective, for example, letters to the family, portraits, furniture bearing the family coat of arms, etc. These assets 'bear witness to family history' and therefore constitute 'an emotional rather than pecuniary legacy, whose meaning for the family requires that the rules applicable to their transfer are arranged in a specific way, in particular, to avoid their being dispersed in such a way that would deprive them of the familial element that is central to their value.' (Grimaldi, M., *Droit patrimonial de la famille*, Dalloz Action, 7th edition 2021/2022, No 235.221).

According to case law (see, in particular, [1st Civil Division, 21 February 1978, appeal No 76-10.561, published in the Bulletin](#)), the rules on order of succession and sharing-out set out in the Civil Code (*Code Civil*) do not apply to these assets. Thus, in the absence of a better agreement between the family members or a testamentary disposition (*disposition testamentaire*) to the contrary, these assets may be entrusted, by way of deposit, to the family member who the courts consider best qualified to keep them. Rather than being transferred to a particular family member, therefore, family heirlooms are entrusted into the care of a family member who must keep them at the disposal of the other members.

### *Cemetery plots*

A cemetery plot is a place in a cemetery (a vault or a grave). Cemetery plots have a particularly significant

family purpose which, according to French case law, justifies a derogation from the ordinary law on succession.

Therefore, by derogation from [Article 815 of the Civil Code](#), cemetery plots may never be subject to sharing-out: they are transferred to the heirs, who remain in a state of permanent joint ownership (*indivision perpétuelle*). In their capacity as joint owners, the heirs have the right to be buried in the plot, to have their family members buried there and to oppose the burial of persons who are not family members of the person who bought the plot (*concessionnaire*).

### *Literary and artistic property*

[Article L. 111-1 of the Intellectual Property Code](#) (*code de la propriété intellectuelle*) provides that copyright (*droit d'auteur*) encompasses intellectual and moral characteristics (e.g.: the right to disclose a work, the right to put one's name to a work, the right to respect for a work, etc.) as well as pecuniary characteristics (e.g.: the right to receive compensation for disclosure of a work).

The Intellectual Property Code contains several specific rules that derogate from the normal rules on order of succession in order to protect copyright.

For example, as regards pecuniary characteristics, [Article L.123-6 of the Intellectual Property Code](#) provides that the surviving spouse has a special usufruct over any right of use (*usufruit spécial sur le droit d'exploitation*) that the author did not use. Legal commentators consider that this special usufruct 'is explained by the fact that the surviving spouse is presumed, by their solicitude, to have fostered an environment conducive to the creation of intellectual works and that it is, consequently, lawful to compensate them by awarding a right to benefit from the product of that creation.' (Grimaldi, M., *Droit patrimonial de la famille*, Dalloz Action, 7th edition 2021/2022, No 235.201).

As regards intellectual and moral characteristics, [Article L. 121-2 of the Intellectual Property Code](#) provides that, following the author's death, 'the right to disclose the author's posthumous works shall be exercised by the executor(s) (*exécuteurs testamentaires*) designated by the author during their lifetime(s). In the absence of executors, or after their death, and unless the author has stipulated otherwise, this right shall be exercised in the following order: by descendants, by a spouse against whom there is no final judgment of judicial separation (*jugement passé en force de chose jugée de séparation de corps*) and who has not entered into a new marriage, by heirs other than the descendants who will acquire all or part of the estate by inheritance, and by the universal legatees (*légataires universels*) or donees (*donataires*) of the totality of the future estate.' The order of persons referred to in this article is therefore different from that provided under [Article 734 of the Civil Code](#) for determining the order in which the heirs of the deceased inherit the estate.

### *Agricultural leases*

An agricultural lease (*bail rural*) is a contract for the lease of agricultural land or buildings by an owner or lessor (*bailleur*), to a tenant or lessee (*exploitant*), in return for rent. This allows the land or buildings to be made available for agricultural activity.

[Article L. 411-34 of the Rural and Maritime Fishing Code](#) (*code rural et de la pêche maritime*) provides, as a matter of principle, that an agricultural lease continues for the benefit of the deceased's spouse, a partner with whom they had entered into a civil partnership (*pacte civil de solidarité*), and ascendants and descendants of the deceased participating in the farm or who had actually participated in it during the five years preceding the death.

This specific rule is justified by the specific nature of farming. It derogates from ordinary law in that:

- collateral relatives (i.e. siblings), who are heirs of the deceased under the ordinary law on succession, cannot benefit from the right to an agricultural lease;
- to benefit from the right to an agricultural lease, the persons listed under Article L. 411-34 of the Rural and Maritime Fishing Code must have actually participated in the farm before the death.

### *Specific rules for the protection of a couple's home*

Specific rules are laid down to prevent the spouse or civil partner from jointly inheriting the couple's home with

the deceased's other heirs. These rules, which were laid down by reason of the familial nature of the home, are intended to preserve the living environment of the surviving spouse or, as regards residential leases (*baux d'habitation*), of the deceased's civil partner.

[Article 1751 of the Civil Code](#) lays down the principle of joint occupancy (*cotitularité*) as regards residential leases. It thus provides that 'the right to a lease over premises that are of neither a professional nor commercial nature, which are actually used by both spouses as their residence, irrespective of their matrimonial property regime and notwithstanding any agreement to the contrary, even if the lease was entered into before the marriage or civil partnership, if the partners jointly request it, shall be deemed to be enjoyed by both of the spouses or civil partners.'

The last paragraph of this article states that 'in the event of the death of one of the spouses or civil partners, the surviving spouse or civil partner and joint occupant under the lease shall have an exclusive right to that lease, unless they expressly renounce it.'

Where the home belongs jointly to the spouses or belongs to the deceased spouse, [Article 764 of the Civil Code](#) provides that a spouse entitled to inherit who was actually occupying the home as their main residence at the time of death, has, until their death, a right of residence (*droit d'habitation*) over the home and a right to the use of the furniture (*droit d'usage sur le mobilier*). In contrast to the rule applicable to residential leases, this exception only applies to married couples (and not to those in civil partnerships).

## 2. Special rules on sharing-out: preferential allocation

The sharing-out of the estate is the final stage in the settlement of a succession. It puts an end to joint ownership, since it involves allocating individual rights to each heir over the assets making up the estate to be shared out.

In principle, in order to share out the estate, as many lots must be established as there are heirs jointly entitled to a share in it ([Article 827 of the Civil Code](#)). In principle, all lots are of equal value; if the composition of the estate makes it impossible to establish lots of equal value, the difference is compensated by making a payment to equalise the shares (*soulte*) ([Article 826 of the Civil Code](#)).

[Article 830 of the Civil Code](#) specifies that in the establishment and composition of the lots, efforts should be made to avoid dividing economic units and other collections of assets the breaking-up of which would lead to their depreciation.

The joint heirs may agree on how each lot should be allocated. In the absence of agreement between them, the lots shall be allocated by random draw.

However, some assets may be excluded from the random draw and be allocated preferentially to an heir. The rules therefore provide that the surviving spouse or any joint heir may request the preferential allocation (*attribution préférentielle*) of:

- any agricultural, commercial, industrial, craft or professional undertaking in which they actually participate or have participated ([Article 831 of the Civil Code](#)). This preferential allocation applies as a matter of law to any farm which does not exceed the surface area limits laid down by Council of State decree, unless the court has ordered that it remain under joint ownership ([Article 832 of the Civil Code](#)). It is subject to the final decision of the court adjudicating on the substance of the case in other cases;
- ownership of or right to a lease over premises that they actually use as their residence, if they were residing there at the time of death, and the furniture in it, as well as the deceased's vehicle if they need it to meet their everyday needs ([Article 831\(2\)\(1\) of the Civil Code](#)). This preferential allocation applies as a matter of law ([Article 831\(3\) of the Civil Code](#));
- ownership of or right to a lease over business premises which are actually used in the course of their business, as well as the moveable objects necessary for that business ([Article 831\(2\)\(2\) of the Civil Code](#)). This preferential allocation is subject to the final decision of the court adjudicating on the substance of the case;
- all the moveable objects necessary for the use of an agricultural property (*exploitation d'un bien rural*) farmed by the deceased as a farmer or sharecropper, where the lease continues for the benefit of the requester or where a new lease is granted to the requester ([Article 831\(2\)\(3\) of the Civil Code](#)). This preferential allocation

is subject to the final decision of the court adjudicating on the substance of the case.

In all cases, even where preferential allocation applies as a matter of law, it is never automatic. This means that it must always be requested by the surviving spouse or heir who wishes to benefit from it.

## 2 Under the law of this Member State, do these special rules apply to the succession in respect of the above-mentioned assets irrespective of the law applicable to the succession?

Of the rules on order of succession that derogate from the ordinary law set out above, only two apply irrespective of the law applicable to the succession:

- the rules on preferential allocation. The Court of Cassation (*Cour de cassation*) held that 'the rules on preferential allocation are, by reason of their economic and social purpose, overriding mandatory provisions, such that those laid down by the law of the place where the immovable property is situated are intended to apply.' (1st Civil Division, 10 October 2012, appeal No 11-18.345, published in the Bulletin);
- rules on the moral rights of authors (*droit moral des auteurs*). The Court of Cassation thus indicated that 'the rules providing that, in France, a person who is the author of a literary or artistic work enjoys the moral right established for their benefit, are laws of mandatory application.' (1st Civil Division, 28 May 1991, appeal Nos 89-19.522 and 89-19.725, published in the Bulletin)

## 3 Under the law of this Member State, do special procedures exist to ensure compliance with the above-mentioned special rules?

There are no special procedures under national law to ensure compliance with the above-mentioned special provisions.

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