Succession

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European Judicial Network (in civil and commercial matters)

Italy

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

Dispositions of property upon death can be drafted only by means of a will. Joint wills and agreements as to future successions are not permitted.
Testamentary dispositions can take the form of either:

- designation of an heir, through which the testator disposes of the entire estate or a portion thereof without specifying the assets subject to that disposition;
- legacy, through which the testator disposes of one or more specifically identified assets.

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

Testamentary dispositions do not need to be registered, irrespective of the form used.
In the case of a public will, which is a will drawn up in the form of a notarial deed, the notary must transfer the will following the death of the testator from the register of last wills and testaments to the register of transactions *inter vivos* and register the certificate of transfer.
In the case of a holographic will, which is a will drawn up privately, this must be presented to a notary, following the death of the testator, so that the notary can ensure it has legal effect by means of a record of publication, which will then be registered.

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

A testator may legally dispose of his entire estate. His spouse, his children and their descendants and (if there are no children) his parents are entitled to a ‘reserved’ portion, which is a minimum share of the estate reserved for them, but a will that does not observe this right is still valid and effective, provided it is not contested by the heirs described above. If the will is not contested or any proceedings to contest it are found to be without foundation, the will retains its full force and effect.

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

If there is no will, the rules on legal succession in the Civil Code apply. There can be cases where there is a will but it disposes of only a portion of the estate: for the remainder, the rules of legal succession will apply alongside those governing testamentary disposition. The individuals who inherit by law are the spouse, children, parents, siblings, and relatives up to the sixth degree. The portions of the estate inherited depend on which of the individuals listed above actually exist. The existence of children excludes both parents and siblings, and more distant relatives.

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?

An inheritance devolves to the heir on the basis of a declaration of acceptance, while a legacy devolves automatically, provided that it is not waived. Acceptance of an inheritance cannot be partial, and can be express (by means of a corresponding declaration) or tacit (which happens when the heir carries out an act that could not be carried out unless that individual were the heir, such as the sale of an item of succession property). The declaration of acceptance or renunciation occurs through a declaration issued by a notary or a clerk of the competent court in the jurisdiction where the succession is opened. The same rules apply in the case of heirs to reserved portions, who may not accept or waive only the reserved portion. Such heirs can, however, waive their rights to a reserved portion of an estate in cases where that portion has been damaged. If an heir to a reserved portion has been excluded from the estate or has been bequeathed a share of the estate smaller than the portion reserved for him, he may bring action solely in order to assert a right to receive the reserved portion.

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)

There is no single procedure defined by law.

The succession opens when the testator dies. With reference to that date and on the basis of the will or the applicable legal rules, the persons designated as heirs or legatees are identified. Those individuals are then responsible for taking the necessary steps to issue declarations of acceptance or renunciation, which are then used to establish to whom and in what proportion the succession property is bequeathed.

If there are several joint owners, each of these individuals has the right to request the division of the estate, which can take place by means of a contract or through a request to the courts in ordinary civil proceedings to deliver a judgment dividing the estate.

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

Legatees automatically acquire their status unless they renounce the inheritance. The status of heir is acquired through an express declaration of acceptance or by means of an act that constitutes tacit acceptance. Persons designated as heirs who are in possession of succession property become heirs automatically after three months have passed following the date on which the succession opened.
Express acceptance, which must be provided within ten years of the opening of the succession, may take the form of acceptance pure and simple or acceptance under benefit of inventory in order to limit liability for the deceased’s debts.
Acceptance of succession devolved to minors and other individuals who are subject to a legal incapacity must be made expressly and under benefit of inventory.
The effects of acceptance of the estate or legacy are retroactive to the time when the succession is opened.

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

The heirs are liable for all debts of the deceased, in proportion to the value of their respective portions of the inheritance. Conversely, legatees are not liable for these debts.

The heir pure and simple has unlimited personal liability for the deceased's debts, and is therefore liable even if the amount of the debts exceeds the value of the assets inherited.

If the succession has been accepted under benefit of inventory, the heir is liable for the deceased's debts only up to the value of the assets inherited.

If the succession has been accepted under benefit of inventory, a report must be drafted describing and stating the value of all property forming the assets and all liabilities: the heir must be authorised by the courts to undertake any actions to dispose of succession property and this authorisation will be granted only if the actions in question are in line with the interests of the creditors under the succession.

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

Heirs and legatees are required to provide the tax authorities with a Declaration of Succession, which contains information about all succession assets including real property, with the corresponding land registry details. A copy of the Declaration of Succession is used to transfer land registry records, and thus register any properties in the names of the heirs or legatees who are now the owners.

The procedure to be applied for entry of the acquisition of property inherited by heirs or legatees in the Property Registers is different for the two categories. For a legatee, acquisition of ownership is entered on the basis of a copy of the will stating that legacy. For an heir, the express declaration of acceptance or the action establishing tacit acceptance is recorded.

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?

Appointment of an administrator is not mandatory.

Anyone drafting a will can name an executor, who is responsible for administering the assets only to the extent necessary for performance of that role.

The law indicates the individuals responsible for administering an estate if the heirs are subject to a legal incapacity.
If none of the persons designated as heirs accepts the succession, it is possible to ask the courts to appoint a curator for the estate in abeyance, who will administer the estate assets until an initial declaration of acceptance is issued, at which point the office of curator will automatically cease.

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

If a legatee is expecting that action be taken by the heirs, it is those individuals who are responsible for executing the provisions of the will.

The testator can name an executor, who will then be responsible for ensuring that the provisions of the will are observed.
The assets of the estate are administered by the individuals who are required to execute the provisions of the will, until such time as those tasks have been completed in full.

9.3 What powers does an administrator have?

In general, administrators only have powers of ordinary management, so that they can protect the assets and their value. Authorisation from the courts is required for actions associated with disposals of property or extraordinary administration.

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?

The municipality in which the deceased was born or was resident issues a Death Certificate, an extract from the Register of Deaths and a Certificate of Family Status, which contain the information relating to the death of the individual, his personal details and family relationships.

The status of heir or legatee is not attested by any documents issued by the public authorities.

Anyone wishing to assert the status of an heir or legatee can provide a Notarised Document, which is a declaration made before a notary by two witnesses who are not involved in the succession, subject to criminal liability. Public authorities also accept a Statement in lieu of a Notarised Document, drafted by the individual concerned, still subject to criminal liability.

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