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INHERITANCE AND WILLS

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1. INTRODUCTION

Whether we like it or not, there comes a time when we all have to deal with the laws of inheritance which determine how a person's property is distributed on death. Under Dutch law everyone is allowed to make



a will stating to whom he or she wants to leave their property. However, in the Netherlands certain people are entitled by law to a statutory share. As a consequence, children cannot be disinherited completely; they are always entitled to a legitimate share.

It is important for you to know which law will apply to your estate, because each country has its own rules of inheritance. Some countries will not designate statutory shares.

The rules of private international law decide which country's law applies. If the deceased was a resident of the country of which he (or she, wherever 'he' is mentioned) was a national at the time of his death, then the law of the country of his nationality (and residency) will come into effect. So if a Dutchman dies in the Netherlands, the Dutch Civil Code rules. If foreign nationals, living in the Netherlands, die here, then private international law applies.

Like the law of inheritance, private international law also differs from country to country. This can sometimes give rise to conflicts.

€ Changes from 1 January 2010

The Successiewet 1956 is simplified in various parts, so the rates and the number of tariff categories are reduced and the exemptions are increased. The terms "Successierecht" and "Schenkingsrecht" have been replaced by 'Erfbelasting' and 'Schenkbelasting'.

There is a new system for capital which is housed in trusts and foreign foundations. The business succession and the conditions for transferring the business by life become easier.

The changes are important for anyone with capital who wants to make a bequest or donation and anyone who receives an inheritance or donation. In addition, the changes affect businesses and certificated charitable institutions (ANBI's / SBBI's).

2. THE HAGUE INHERITANCE CONVENTION

The Hague Inheritance Convention was signed in 1989 in order to prevent these conflicts and member countries apply the rules laid down by the Convention. These rules are relevant to people who live or have lived for a considerable time in a country other than their country of nationality.

Dutch expats living abroad as well as foreigners living in the Netherlands are affected. Anyone who owns property in another country, for example a holiday home may also be affected. It is always advisable to have a written will drawn up by a notary/solicitor either in your country of origin or in the country where you are living.

The Convention gives you the opportunity to choose between the law of the country of your nationality and the law of the country of your residence, regarding the inheritance of your estate. It is not compulsory to make a choice, but if you do, you will determine in advance which law will apply. Countries that are parties to the Convention will respect your choice. If you have not decided on which law will be applied then the Convention has rules that will determine the applicable law.

€ Rules of the Convention

The rules are a combination of the nationality principle and the habitual residence principle.

- Nationality principle: the applicable law will be determined by the nationality of the deceased, regardless of the place of residency at the time of death. The Netherlands applied this principle before 1989.
- Habitual residence principle: the applicable law will be determined by the place of residency at the time of death. In some countries this is known as the “domicile principle”. There is however a difference between the two. According to the rules of the Convention your domicile is not always your habitual residence. It depends on your circumstances in the country of your habitual residence. For example: if you are transferred to Singapore for just one year and your family remains in the Netherlands then the Netherlands remain your habitual residence. If your family joins you for a more



permanent stay then Singapore becomes your habitual residence.

Although you may choose the law of inheritance under the Convention, you cannot choose any country's law, but you are restricted to either your country of nationality or that of your habitual residence.

The choice of law is valid if the chosen law is:

- The law of your nationality at the time of designation;
- The law of your nationality at the time of death;
- The law of your habitual residence at the time of designation; OR
- The law of habitual residence at the time of death.

Note that if you move to another country or change your nationality, you might have to change your choice of law.

You need to go to a notary/solicitor (*notaris*) to record your designation. The rules of the Convention will apply in the Netherlands, whether or not the law of your choice is party to the Convention. In the Netherlands the rules of the Convention will apply. If your inheritance is handled in a non-contracting country (not a party to the Convention) it might be dealt with in a different way than it would have been in the Netherlands. Ask your notary/solicitor for advice to rule out any uncertainties.

If you have chosen the law of a non-contracting country and if you own property abroad, then you should also contact your notary/solicitor to check that your choice would be valid in the country in question.

If you have already specified your choice of law in a will before the Convention came into force, this will still be valid. It is advisable to check with your notary/solicitor, especially after you move away from the Netherlands.

€ **If you do not choose a law**

If you have not designated your choice of law by the time of your death, then the rules of the Convention will determine the applicable law to the inheritance of your estate.

There will not be any doubt if the deceased was habitually resident in the country of his nationality. Even if he had a second nationality, the applicable law is the law of his habitual residency.

However, if the deceased was at the time of his death habitually resident in a country other than the country of his nationality at the time of his death, then the Convention provides two major rules:

1. If, just before his death, the deceased has been habitually resident for at least five consecutive years in a country other than the country of his nationality: the law of the country of habitual residence applies.
2. If, just before his death, the deceased has been habitually resident for less than five consecutive years in the country of which he was not a national: the law of the country of his nationality applies.

€ Exceptions

The rules determine the applicable law, but exceptions can be made. This can be the case if the deceased was more closely connected to a country other than the one indicated by the rules of the Convention. This can be an economic, cultural or emotional connection.

3. THE DUTCH LAW OF INHERITANCE

According to the law of the Netherlands only blood-relatives can be potential heirs/beneficiaries. In-laws are not permitted to be heirs. The only exception to this rule is a spouse or registered partner.



INHERITANCE AND WILLS

Under Dutch law there are four categories of potential beneficiaries/ heirs in descending order of priority:

- Spouses and direct descendants (children, grandchildren, great-grandchildren). Spouses and children inherit an equal share of the estate. A registered partnership gives the partners the same rights as spouses in a marriage. A living together contract is not a registered partnership and therefore partners with such a contract do not have the same rights as spouses. However they can state their wishes in a will.
- Parents, brothers and sisters and their descendants. A parent always inherits a minimum share of the estate.
- Grandparents and their descendants (uncles, aunts, cousins, nephews, nieces etc.) or great grandparents and their descendants.
- *De Staat der Nederlanden*: if there are no blood-relatives the estate falls to the Dutch State.

If the deceased has no spouse or children, then relatives from the second category above are eligible for the inheritance of the estate and so on.

A new Dutch law of inheritance came into effect in January 2003. One of the major changes in the law is the position of the longest living spouse or partner. Before the change in law, the longest living partner inherited a share of the estate equal to the share of the children (child share). Children were entitled to claim their share, which could cause financial problems for the surviving partner. Couples were advised to make a “longest living partner will”. The present inheritance law is based upon this principle.

Now, the longest living partner will get control over the whole estate.

The children can claim on their surviving parent, who may use the whole estate as he pleases. This is called the legal division.

The children can demand their claim only in the event of death or bankruptcy of the longest living partner. It is very important to determine the exact amount of the claim.

The testator can make changes in the legal division of assets in his will. He can make it possible for his children to demand their claim when his spouse remarries. He can also appoint stepchildren in his will and make them beneficiaries with the

same rights as his own children.

The longest living partner can reject the legal division of assets within three months after the date of death. This must be done through a notary/solicitor.

In case of absence of a will the law stipulates that the order of beneficiaries is according to the categories mentioned above.

Unlike some countries, in the Netherlands a will must be made in the presence of a notary/solicitor. Any changes or revocations must also be made by a notary/solicitor.

Parents can disinherit a child in their will. However children are always entitled to a “legitimate share” (*legitieme portie*) amounting to half of the portion the child would have received in the absence of a will.

Spouses or legal partners can disinherit each other. They are not entitled to a legitimate share. To alleviate the consequences of disinheritance, the law gives the longest living partner the right to a suitable level of provision; for example a spouse can make use of the house as long as she or he lives.

Another form of will still in use is the *vruchtgebruik testament* where the longest living partner receives the use and enjoyment of certain goods. However, he does not own any of these goods.

The new law and the parental estate division will give the longest living partner the right to use up or spend all the goods of the estate whereas the *vruchtgebruik testament* only gives the right to use the goods.

5. IMPORTANT FACTS AND STEPS TO BE TAKEN FOLLOWING A DEATH

A doctor must write a statement giving the time, place and cause of death.

Contact an undertaker to make arrangements for the funeral or cremation.

Find out if there is a will or a codicil. Codicils are not registered. Data is kept by the Central Register of Wills (*Centraal Testamentenregister*) in The Hague concerning by whom, when and where a will has been made. The notary/solicitor is obliged to report those data to the register. The content of the will is not known in the Register. Following someone’s death, anyone can inquire of the Register whether there is a will.



INHERITANCE AND WILLS

Obtain a statement of the right of inheritance (*Verklaring van erfrecht*): this will be done by a notary/ solicitor after checking the *Centraal Testamentenregister* and other population registers to establish who the heirs/beneficiaries are. You need to take a death certificate, marriage certificate, marriage contract and names and addresses of all the children to the notary/solicitor. The undertaker usually reports the death to the *Afdeling Bevolking* in the Town hall (*Gemeentehuis*) and will pass on to you the official death certificate.

Note: banks will block any accounts in the name of the deceased, but beneficiaries can make use of the account with a statement of right of inheritance for paying bills related to the deceased.

Notify employers, insurance companies, mortgage companies, pension funds and so on.

Check whether there are loans, automatic bank payment arrangements, subscriptions or similar.

Declaration of death duties and capital transfer tax: this must be dealt with within eight months after the event of death by the heirs/beneficiaries (or the executor of the will).

It is important to make an appointment with a notary/solicitor as soon as possible, so that all legal aspects are covered in good time.

An heir/ beneficiary should realise that the consequences of accepting the estate are for his account from the time of death. This means that the value of any stocks and shares as it was on the date of death will be taken to settle the death duties and capital transfer tax, even if the value has changed considerably by the time of payment.

Each beneficiary can refuse the right of inheritance. This will likely be the case if there is a negative estate caused by debts.

€ Vocabulary you may encounter when dealing with inheritance

Verblijvingsbeding (stipulation): agreement between two partners (not married and not in a registered partnership) to leave the communal goods to the longest living partner. It is advisable to have this officially registered through a notary/solicitor.

Legacy: when the deceased leaves a certain amount of money or certain goods in his will to some one other than his heirs it is called a “legacy” (*legaat*).

Codicil/ holographic will: A handwritten and signed document to bequeath certain goods, such as jewellery and clothes (not objets d’art), or instructions for cremation or funeral. Under the new law it is no longer allowed to appoint an executor in a codicil. This should be done in a will.

It is also advisable to appoint a guardian for your children in a will. If one parent of a married couple dies, then the other will keep the parental responsibility. If both parents die, a guardian is appointed by a judge, unless the parents have appointed a guardian in a will.

Exclusion (*uitsluitingsclausule*): in most cases parents want their children to inherit their estate, but they may also want to prevent the estate falling into the hands of ex-spouses after a divorce. This can be achieved by creating an exclusion in the will.



5. USEFUL ADDRESSES

For general information and to order publications contact the government information line:

Rijksoverheid

Tel. 0800 8051 (free phone) 9.00 to 21.00 hrs.

From abroad 0031 77 465 67 67

www.rijksoverheid.nl

Or contact: Koninklijke Notariële Beroepsvereniging (KNB)

Notaristelefoon

Tel. 0900 - 34 69 393

From abroad 0031 70 346 00 22

Opening hours 9.00 to 14.00 hrs

www.notaris.nl

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