



**José DUCASSE-DAVID - François-Régis BOYER  
Nathalie CAYROU LAURE**

**NOTAIRES**

Office Notarial  
13 Rue d'Alsace Lorraine  
B.P. 50634 – 31006 Toulouse Cedex  
Tél. 05 62 27 58 58  
Fax. 05 62 27 58 59

**French property department : 05.62.27.55.90  
Mr Laurent BOUNET**

E.mail : [l.bounet@notaires-esquirol.com](mailto:l.bounet@notaires-esquirol.com)

[www.notaires-esquirol.com](http://www.notaires-esquirol.com)

**FRENCH INHERITANCE LAW BY LAURENT BOUNET**

**I. INTRODUCTION**

French law governs the inheritance to **immovable property** situated in France, **regardless** of the deceased's nationality or place of domicile at the time of death.

French inheritance law differs greatly from English law and it is therefore very important to address the issue of the inheritance to the property you are buying **before** signing the deed of purchase ("l'acte authentique").

The distinction between movable property, (furniture, bank account, stocks and shares), and immovable property, (buildings and land), is important.

The succession to movable property is governed by the law of the place of the deceased's domicile at the date of death.

So, for example, the inheritance to all of the property in France belonging to an Englishman who dies domiciled in France will be governed by French law.

**II. THE "RÉSERVE LÉGALE"**

Any property which is governed by French inheritance law **cannot** be freely disposed of by will. There exist two classes of heir who possess an inalienable right to a proportion of the property (the "héritiers réservataires")

- 1) the surviving descendants,
- 2) if there are no surviving descendants, the surviving spouse.

Since 1st January 2007, the surviving ascendants are not "héritiers réservataires" any more.

The proportion of the property which is inherited as of right by the "héritiers réservataires" is known as the "**réserve légale**". The size of this reserved portion varies according to the number of heirs :

- if there is one surviving child it will amount to one-half of the estate ; two-thirds of the estate if there are two surviving children ; and three-quarters if there are three or more children.

- if there are no surviving children, it will amount to a quarter of the estate for the surviving spouse.

Once the size of the "réserve légale" has been established, the remainder of the estate, (the "**quotité disponible**", or disposable portion) can be disposed of as the owner wishes, i.e. by will.

If no attempt is made to dispose of this remainder, (i.e. the deceased dies **intestate**), the estate will devolve as follows :

#### III. a. WHERE THERE IS NO SURVIVING SPOUSE

- to the descendants, if there are any. Any children, grandchildren etc. will inherit the whole estate to the exclusion of any other (i.e. parents).

- one quarter to each of the parents of the deceased if there are no descendants, with the remainder passing to any brothers and sisters of the deceased, or their children;

- to the deceased's brothers and sisters, or their children ; if there are no surviving parents.

#### III. b WHERE THERE IS A SURVIVING SPOUSE

The inheritance of the property is **subject to** the statutory rights of the surviving spouse.

##### 1) Statutory Rights in the Absence of a Will.

He/she has the following statutory rights :

- a life interest in the estate or a quarter in full ownership if there are surviving children of both spouses,

- a quarter in full ownership if any of the children are not the surviving spouse's,

- a life interest in one-half of the estate if there are only surviving parents or brothers and sisters (or their offspring), of the deceased spouse.

- the full estate in the other cases

These statutory rights can be defeated by a will.

##### 2) Improving the Spouse's Rights.

2.1) If there are any "héritiers réservataires", the current provisions of French law provide that the rights of the surviving spouse cannot exceed :

## 2.1 Where there are children

- an absolute interest in the disposable portion of the estate,
- or a life interest (or "**usufruit**") in the whole estate,
- or a quarter of the estate absolutely with a life interest in the remainder (maximum rights of the surviving spouse)

2.2) If there are no "héritiers réservataires", the whole estate can be left to the surviving spouse.

A life interest enables the beneficiary to occupy and enjoy the property, in whole or in part, for the rest of his or her life, but bestows no right of ownership of the property and therefore no right of sale. A spouse who enjoys a life interest in the whole of the property cannot be forced to consent to a sale by the children. He or she can, however, choose to sell the life interest.

It is necessary to take action, for example by will, to ensure that a spouse can enjoy these extended rights.

## **IV. LIMITING THE EFFECT OF FRENCH LAW.**

The strict effect of the French laws of inheritance can be limited in the following ways :

### 1°) **An Alteration of matrimonial regime**

If the matrimonial regime of the spouses does not forbid them to do so, the spouses can avail themselves of the right granted to them by the Hague Convention of 14th march 1978, and submit their property relations deriving from their marriage, as **concern their immovable property located in France**, to the French regime of Universal Community of Property including a clause according to which, in case of the dissolution of the community by the death of one of them, all assets composing the community shall belong to the survivor, without exception or reservation. (This could be compared to the English "joint tenancy" system.)

The surviving spouse shall benefit from this clause, whether or not there are children of the marriage, because he/she is not considered as an heir. No tax is due upon the death of the first spouse.

But if there are children from a previous marriage, they would have legal remedy to avoid the transfer of their parent's share passing to the stepfather/mother.

2°) Inclusion of a "**Clause Tontine**" in the purchase deed (or in the company memorandum and articles).

This can be of interest to married couples who cannot benefit from the alteration of matrimonial regime (see above). In the case of unmarried couples, such a clause has adverse tax consequences upon the death of one of the joint owners (see below).

A Clause Tontine creates a legal fiction whereby neither spouse/partner is considered to be outright the owner of his/her share in the property unless he or she survives the other, and both spouses/partners are considered to be the absolute owner of the whole of the property, provided he/she survive the other.

The disadvantage of a clause of this nature is that it cannot be unravelled, even by the courts, and the property cannot be transferred from one spouse/partner to the other in the event of divorce (or separation), **unless** the parties reach an agreement themselves.

On the death of the first spouse/partner to die, the surviving one :

- is considered in law to have been the absolute owner of the property since the date of purchase,
- **is considered for taxation purposes to have acquired one half of the property on the death of the other one, and therefore pays tax on the value of that half.** (see below "V-- Taxation" for calculation).

On the death of the surviving spouse/partner the French rules of succession, outlined above, will apply.

For unmarried couples, this could be a possibility. However, it is expensive as transfer tax is applied at 60% on the half transferred.

### 3°) A **Will or "Donation Entre Epoux"** (Gift between Spouses).

It is common to make provision for the surviving spouse to inherit the whole estate. Such provision is nevertheless limited in its effect by the strict application of French law, as explained above.

A will can also benefit any other third party, subject to the rights of the "héritiers réservataires".

A valid foreign will will be taken into account when determining the succession to property to which French law applies, providing it does not conflict with French law.

We would recommend that the contents of any foreign wills be reviewed by the notaire.

4°) **Purchase by a company** - the shares in the company are movable property and are, therefore, inherited according to the law of the deceased's last domicile.

The cost of incorporating a French company amounts to approximately from 1.500 € to 2.000 €;

A property owned by a company is subjected in principle to an annual tax of 3% of the value of the property. There is an exoneration from the obligation to pay this tax :

- if the company is French, or located in a country having a reciprocal tax agreement with France (i.e. England),
- and an annual return (Form 2746) has been filed with the tax office (revealing the names and contact details of all the shareholders).

For tax reasons, a purchase by a foreign company should be carefully considered, (please refer to our note "Non French Company, French real estate and French taxes)

A purchase by a company may also not be the best solution if the property is to be rented, (see with the "notaire").

5°) Any other option should be discussed with the "notaire" before the purchase is completed. The necessary formalities to be carried out and the costs for the above can also be communicated in more detail.