

# The Inheritance Rights of the Surviving Spouse

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**ABSTRACT:** This paper addresses the topic of inheritance rights of the surviving spouse, by making reference to the special conditions required by law for the surviving spouse in order for him/her to be able to inherit, as well as the legal characteristics of the surviving spouse. Also, we shall list the inheritance rights of the surviving spouse and we will present the general inheritance right along with any of the classes of legal heirs, mentioning the share of the inheritance of the surviving spouse. The right of occupation of the surviving spouse will be made known and, at the same time, we will present the conditions required for the occurrence of this right, its legal characteristics, as well as general aspects regarding the special right over furniture and household objects.

**KEYWORDS:** inheritance right, share of inheritance, surviving spouse, right of occupation, real right

## Introduction

As stated in the Civil Code from 1864, as regards the financial situation of the surviving spouse, he/she did not benefit from the same rights as in the current legislation, having the right to inheritance only after the last collateral to the twelfth degree with the deceased.

It can be said that the inheritance situation of the surviving spouse at that time was unfair.

Over time, changes were made to the inheritance rights of the surviving spouse, so that according to the provisions of the Law of June 28, 1921, the surviving spouse came to inherit after the last collateral relative to the fourth degree.

The biggest improvement was the regulation brought along by Act no. 319 of 1944, consisting in the supplementing of three rights, namely: a right to a part of the inheritance in competition with any of the classes of heirs, a temporary right of occupation for the spouse with no housing and an exclusive right of the surviving spouse over the furniture and assets belonging to the household.

The current Civil Code took over those provisions of Act no. 319/1994, acknowledging for the surviving spouse the same inheritance rights.

It is known that one of the special conditions for the surviving spouse to be able to participate in the inheritance distribution, is to have on the date of opening the inheritance, the status of spouse and no final divorce decision to be ruled.

In addition to this special condition, the surviving spouse must have an inheritance capacity, namely that person's ability to be a subject of rights and obligations, inheritance status, as well as the condition that he/she is not unworthy.

Therefore, the surviving spouse acquires the inheritance right in competition with any of the four classes of legal heirs.

## The special conditions that the law requires to the surviving spouse in order for him/her to be able to participate in the inheritance distribution

In order to be entitled to the inheritance of the deceased spouse, the surviving spouse must meet, in addition to the general conditions required by law (inheritance capacity, their status, not to be unworthy), a special condition, namely: *to be the surviving spouse at the date when the inheritance is debated*. This condition results from the provisions of S.970 of the Civil Code, according to which *"the surviving spouse inherits the deceased spouse if on the date when the inheritance is debated, there is no final divorce decision ruled"*. Therefore, until the moment

when the divorce decision remains final, the spouses keep this quality and, implicitly, the mutual right to inheritance (Urs 2017, 59-60).

In the event that the spouses have asked the help, for the dissolution of the marriage, to the civil status officer or to the notary public, the spouses shall keep this status until the date of issuance of the divorce certificate. Therefore, if the spouses have requested the civil status officer or the notary public to dissolve their marriage by their consent, but one of the spouses has died before the divorce certificate is issued, the marriage ends by the death of the spouse, and not by divorce. Consequently, the surviving spouse inherits the deceased spouse (Genoiu 2012, 81-82).

As the status of spouse acquired through marriage may be lost as a result of the dissolution of the marriage by divorce or as a result of the dissolution of the marriage by nullity, some clarifications have to be made:

1) If the marriage was dissolved by divorce before the date when the inheritance is debated, the deceased's ex-spouse no longer has an heir status (since he/she is no longer a spouse). According to S.382 (1) of the Civil Code "*the marriage is dissolved from the day when the court decision became final*".

Consequently, if the death of the person who owns the inheritance occurred after the divorce decision has been ruled, but before it becomes final, the status of spouse is still preserved and, therefore, the surviving spouse will be able to inherit the deceased spouse. If the divorce was ascertained by means of a notarial or administrative procedure, the marriage is considered dissolved on the date of issuance of the divorce certificate (according to S.375 of the Civil Code).

2) If, prior to the opening of the inheritance proceedings, the nullity (or the annulment had been ruled) of the marriage had been established by court decision, the issue of inheritance rights can no longer be discussed, because the status of spouse no longer exists (Stănciulescu 2017, 141-142).

In case of nullity (absolute or relative), the marriage is annulled with retroactive effect, even if the court decision finding the nullity of the marriage was ruled after the death of one of the spouses (Cadariu 2006, 373).

S.304 (1) of the Civil Code stipulates that upon the conclusion of a null or annulled marriage, the spouse in good faith keeps, until the date when the court decision remains final, the status of a spouse in a valid marriage. This is the putative marriage. Therefore, if the death of one of the spouses occurred before the court decision of finding or ruling of nullity becomes final and the surviving spouse was in good faith at the conclusion of the marriage, the latter will be able to inherit the deceased spouse as he/she keeps the status of spouse (Urs 2017, 61).

On the other hand, if he/she was not in good faith, the surviving spouse will not benefit from the inheritance, losing the status of spouse with retroactive effect (even if the death occurred before the final decision for the finding of nullity).

If the death of one of the spouses occurred after the decision to dissolve the marriage was final, neither (former) spouse will be able to benefit from the inheritance (because they have lost this status in relation to one another) (Stănciulescu 2017, 142).

### **The legal characteristics of the surviving spouse**

From the provisions of the Civil Code it follows that:

- a) The surviving spouse can benefit from, the inheritance only in his/her own name (not by representation);
- b) The surviving spouse is forced heir (privileged heir);
- c) The surviving spouse is a referral heir;
- d) The surviving spouse is obliged to report the donations to the chart of heirs (but only if he/she participates in the inheritance in competition with the descendants) (Stănciulescu 2017, 143).

### **Enumeration of the inheritance rights of the surviving spouse**

The surviving spouse is not part of any class of legal heirs, but comes in competition with any class called to inheritance proceedings. He/she is not removed from the inheritance, but neither he/she removed the relatives of the deceased (regardless of the class to which they belong).

Although the rights of the surviving spouse are consistent, the legal inheritance remains servient, mainly, to kinship (Stănciulescu 2017, 147).

According to S.972-974 New Civil Code, as in the system of Act no. 319/1944, the surviving spouse has the following inheritance rights: a general right of inheritance, in competition with any class of heirs, a temporary right of occupation over the dwelling house, a special inheritance right over furniture and household assets that have been under the joint use of the spouse.

### **The general right of inheritance, in competition with any of the classes of legal heirs**

According to S.971 (1) of the Civil Code, the surviving spouse is called to the inheritance proceedings in competition with any of the classes of legal heirs (Urs 2017, 64).

The inheritance share of the surviving spouse is:

- a) A quarter of the inheritance, if he/she is in competition with the descendants of the deceased;
- b) One third of the inheritance, if he/she is in competition both with privileged ascendants and with privileged collaterals of the deceased;
- c) Half of the inheritance, if he/she is in competition either only with privileged ascendants, or only with privileged collaterals of the deceased;
- d) Three quarters of the inheritance, if he/she is in competition either with ordinary ascendants or with ordinary collaterals of the deceased.

The share of the surviving spouse in competition with legal heirs belonging to different classes is established as if he/she had been in competition only with the closest of them (Urs 2017, 64-65).

If, following the putative marriage, two or more persons have the status of a surviving spouse, the share established according to S.972 (1) and (2) Civil Code is equally divided between them (Mureşan and Urs 2006, 33).

The share due to the surviving spouse is calculated from the entire list of assets and liabilities of the deceased, with priority, and only the remaining's will be distributed to the legal heirs of the competing class. In the absence of the legal heirs of the four classes or if any of them does not want to participate in the inheritance or cannot come to participate in the inheritance, the surviving spouse collects the entire inheritance.

The surviving spouse is the forced heir and, as a novelty as compared to the old Civil Code from 1864, a referral heir (S.1126). He/she also undertakes to report to the chart of heirs the donations received from the deceased (Urs 2017, 65-66).

### **The right of occupation of the surviving spouse**

The right of occupation of the surviving spouse was regulated for the first time by S.4 of Act no. 319/1944. According to this text of law: "the surviving spouse who does not have another home of his/her own, will have until the execution of the severance of the joint property, and, in any case, at least for one year from the death of his/her spouse, except the right of inheritance according to the above provisions, a right of occupation over the house in which he/she has lived, if it is part of the inheritance" (Urs 2017, 65-66).

This right was due to the surviving spouse from the moment the inheritance was opened, regardless of the heirs with whom he/she competed, provided that he/she did not have his/her own home (Deak 2002, 136).

It is a real right over the asset of another, which consists in the right to use the dwelling house exclusively in one's own interest, and not a simple right of claim (lease) (Chirică 2003, 104).

“The surviving spouse who does not have any real right to use another home corresponding to his/her needs has a right of occupation over the house in which he/she lived until the date the inheritance proceedings are opened, if this house is part of the inheritance property” (S. 973 Civil Code 2018).

The conditions required for the occurrence of the right of occupation are as follows:

- To have lived, on the date the inheritance proceedings are opened, in the house or in the apartment that represents the object of the right of occupation
- Is not the holder of any real right (e.g. right of ownership, beneficial interest, use, occupation) to use another dwelling corresponding to his/her needs
- The dwelling house has to be part of the assets of the inheritance - in whole or in part - being the exclusive property of the deceased, the joint property of the deceased with the surviving spouse or the joint property of the deceased with other people
- Not to have become, by inheritance, the sole owner of the entire dwelling (for example, as sole heir) (Urs 2017, 67-68)
- The deceased should not to have ordered otherwise; for example, the deceased should not have ordered by will the dismemberment of the property, by establishing a right of occupation or of beneficial interest in favour of a third party (Chirica 2003, 79).

### **Legal characteristics**

The right of occupation of the surviving spouse has the following legal characteristics:

- It is a real right, having as object the dwelling house; the surviving spouse will have the right to use not only the house, but also the outbuildings, the joint parts of the property which includes several dwellings, as well as the related land;
- It is a temporary right, which expires on the occasion of the divorce settlement, but not earlier than one year from the date of opening the inheritance proceedings; exceptionally, the right of occupation ceases even before the expiry of the one-year term, in case of remarriage of the surviving spouse;
- It is a strictly a personal right, within the meaning that the surviving spouse cannot assign his or her right to another person; at most, the minor children of the surviving spouse, who live with him/her, as well as the parents or other dependents of the surviving spouse may benefit from it;
- It is an inalienable and unattachable right, a circumstance arising from the strictly personal nature of the right to occupation, and as a result, the creditors of the surviving spouse cannot pursue this right
- It is a right granted by law to the surviving spouse free of charge (Urs 2017, 67-70).

The right to occupation of the surviving spouse “is extinguished by the divorce settlement” or “even before the fulfilment of the one-year term, in case of remarriage” (S.973 (4) of the Civil Code) (Stănciulescu 2017,159).

### **Special right over furniture and household assets**

Through the provisions of S.974 the legislator of the current Civil Code confers on the surviving spouse, if he/she is not in competition with the deceased's descendants, in addition to his/her inheritance share, a special right over the furniture and household assets that have been under the joint use of the spouses. If there are first degree heirs of the deceased established by law, namely, descendants of the deceased, this category of assets will be included in the chart of heirs and divided according to the legal inheritance shares.

There are also a series of assets that cannot be considered objects affected by the provisions of the legislator regarding the special right of the surviving spouse. Thus, in the research literature, the following categories of assets are not considered furniture and household assets:

a) Assets which, according to their nature, cannot be used in the household, assets such as car, motorcycle, piano, assets intended for the practice of the profession or trade carried out by the deceased (for example, watchmaking tools), objects which, by their special value, go beyond the common meaning of the notion of household objects, etc.;

b) Assets that were not intended for the joint use of the spouses, but were procured for another purpose - for example, an investment or a donation - or which were purchased after the date of the actual termination of the cohabitation or assets that were intended for the personal and exclusive use of the predeceased spouse;

c) Assets belonging to the peasant household - animals, tools.

In order for the surviving spouse to benefit from the special right of inheritance over furniture and household assets, two important conditions must be met, namely: the surviving spouse must not be in what regards the inheritance in competition with the first degree heirs - the descendants of the deceased, regardless of degree and the deceased should not to have expressly disposed of his/her share of these assets, through *inter vivos* or *mortis causa liberalities* (Ionașcu 2015, 32-34).

## Conclusions

We find the passing on of inheritance discussed ever since ancient times, and legal specialists have analysed the evolution of the right to inheritance of the surviving spouse.

We found that the regulation of the inheritance rights of the surviving spouse has undergone important changes, and the substantial improvement of the situation of the heir spouse was determined by Act no. 319/1944 and afterwards, the Civil Code took over the provisions of this law. It can be found that in order to benefit from inheritance, the surviving spouse must meet certain general conditions required by law and can inherit only in his/her own name, but not by representation. He/she cannot be removed from the inheritance proceedings and is in competition with any class of legal heirs.

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