

# French inheritance law and French usufruct(usufruit)



The usufruct (usufruit) is the right of the owner (the usufruct) to enjoy property of which another person has the property (the owner), dependent on the usufruct to ensure its preservation.

The owner may use the property and collect the fruit of it such as rents but cannot dispose of it, sell it, destroy it, and this prerogative is reserved for the “nu-propriétaire”. In the French law, it is said that the usufruct has the “usus and the fructus” (the use and the earnings) , but not the uproar. So the usufruct is a dismemberment of the property rights that is somehow the counterpart.

You may become usufructuary when a legal act or provision so provides, so it is possible to become usufructuary under the

French law.

For example, the surviving spouse receives the deceased's estate as usufruct, in this case French inheritance law usufruct will apply. But a person may also hold a right of usufruct over a property through an act, as a result of a contract of sale or a gift of the right of usufruct, for example.

The legal regime usufruct is established by the French law. The French inheritance law usufruct which concerns the usufruct are the articles 578 et seq. of the Civil Code. These articles define in particular the rights and obligations of the usufructuary and the different cases in which the usufruct ends. **(1)**

The usufruct can be a property, but it can also take various forms such as the occupation of a house, the collection of interest of a sum of money, stocks, artworks, furniture.

It's more like the use of a good or a property. The owner has several rights such as the right of the dwelling, the right to rent the property, the right to collect the earnings relating to the use of the property, the right to sell but also one of the most interesting ones is the right to give away its right of use for free.

**(2)**

The usufruct is responsible for ensuring the preservation of the property. At the beginning of the usufruct, an inventory of the furniture and/or a statement of the buildings in usufruct shall be drawn up in the presence of the owner.

This conservation obligation entails two consequences; the usufruct must carry out all the repairs to the property (comparable to the rental repairs in the case of a usufruct building) and is obliged to bear the costs and expenses. But, if the property is improved, it will not be able to claim financial compensation when the usufruct ends. The usufruct

has the right to use the thing provided that he respects the use for which it is intended.

The French inheritance law usufruct is a highly complicated mechanism for inheritance, in order to avoid being in indivision, since when the deceased spouse leaves one or more children, the surviving spouse in the succession has two choices :

- receive a quarter of the property in full ownership

or

- the spouse can receive all of it, in

In this article, we will observe the French inheritance law concerning the usufruct, in order to know how the usufruct is to be understood in a French succession. To do so, it will require compliance with the rules on usufruct in the field of succession **(I)** and also with the tax framework for the usufruct of succession. **(II)**

## **I. The usufruct in the inheritance Law**

The usufruct of the heritage allows a certain degree of security to the surviving spouse (A) but it also allows a legal administration of the properties of the estate (B)

### **A) The rights of the surviving spouse in case of an usufruct**

Often, property dismemberment follows a succession: the surviving spouse retains the usufruct and the children reclaim the property.

In the case of the succession, the surviving spouse of the usufruct of the succession may request its transformation into

a life annuity or capital, under certain conditions. As the deceased's spouse, it is possible to inherit the usufruct of all or part of the estate. The request must be made until the goods are shared.

Article 759 of the civil Code provides that *"Any usufruct owned by the spouse on the property of the predecessor, whether as a result of the law, a will or a gift of future property, shall give rise to a possibility of conversion to a life annuity at the request of one of the unmarried heirs or the successor spouse himself."* (3)

Under an agreement between the other heirs and the surviving spouse, it will be necessary to agree on how to convert the usufruct into life annuity or capital. This will require a notary to determine the value of the usufruct to be converted.

However, in the event of a disagreement between the heirs, in the absence of an agreement between the parties, the request for conversion must be submitted to the judge.

The trial may be introduced until the succession is definitively shared between the heirs.

If he is entitled to it, the judge will determine the amount of the annuity, the security to be provided by the co-heirs to the debtor, and the type of indexing required maintaining the original equivalence of the annuity to usufruct.

Often, property dismemberment follows a succession: the surviving spouse retains the usufruct and the children reclaim the property. The judge cannot, however, impose the conversion to a life annuity of the usufruct relating to the main dwelling and its furniture.

## **B) The legal use of the properties in a**

## **succession**

As for legal use, which is a form of usufruct, it is attached to legal administration. It belongs either to the parents in common or to the one who is in charge of the administration. Civil Code resulting from Ordinance No. 2015-1288 of 15 October 2015 on the simplification and modernisation of family law. (4)

The rights of the holder of the legal use are the rights normally assigned to the usufruct. For example, heirs may receive income; they can give leasing of a property; they can keep the goods; they can enjoy it in person diligently.

They are not required to report accurately on their management until the 16th birthday of their children. They do not have to capitalise on these incomes to give it back to their children. This allows parents to meet their maintenance obligations.

As an attribute of parental authority, the right of enjoyment is non-transferable, unlike the right of usufruct, i.e. it cannot be mortgaged and is elusive.

However, beneficiaries of legal use are required to prioritise the benefits and income they receive for the maintenance and education of the children. Thus, legal use involves a number of charges such as that relating to food; the child's maintenance and education costs or the debts of the estate as specified in Article 386-3 of the civil Code.

After taking the income necessary for the maintenance of the child, the parents benefit from the surplus which they have at their disposal. (5)

## **II. The taxes for the usufruct**

In the case of the estate, the usufruct is subject to payment of the right (A) but also to a property (B)

## **A) Assess the inheritance taxes of the usufruct**

The usufruct has many advantages. For the usufructuary, this allows for the benefit of an inherited property without paying full rights of that property. The value of the usufruct will thus be calculated on the basis of age and will depend in particular on the age of the surviving spouse.

Thus, in usufruct and succession, the value of usufruct will represent only 30% of full property if the surviving spouse is between 71 and 80 years old. At his/her death, the children will not have to pay extra fees.

The tax value of the property in usufruct is assessed by subtraction:

- 90% of full property when the usufruct is 91 years of age or older,
- 80% when aged 81–90,
- 70% when he is 71–80 years old,
- 60% when he is 61–70 years old,
- 50% when aged 51–60,
- 40% when he is 41 to 50 years old,
- 30% when he is 31–40 years old,
- 20% when he is 21–30 years old,
- and 10% below.

The value of the temporary usufruct, when the usufruct is fixed for a specified period of time for its tax value, is set at 23% of full ownership per ten-year period (23% from 0 to 10 years, 46% from 11 to 20 years and 69% from 21 to 30 years), up to the limit of the tax value of the life usufruct. This tax scale for the valuation of temporary usufruct is used in particular for the calculation of registration fees, for example in the case of the donation. **(6)**

## **B) Assessing the value of the usufruct in full ownership**

In the event of a usufruct, assessing of succession and donation duties shall be carried out, the value of the usufruct and property of the goods transmitted shall be fixed at a fixed fraction of the value of the full property, depending on the age of the tenant as previously specified. These two values are determined in accordance with the tax schedule provided for in Article 669 of the General Tax Code.  
(7)

Where the usufruct is established for duration is estimated to be 23% of the value of the whole property for each ten-year period of the duration of the usufruct, without a fraction and without regard to the age of the owner.

To determine the value of the property, only the usual contents opened on the date of the change of the property are taken into account.

### **SOURCES:**

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