INHERITANCE LAW IN FRANCE

Seems to me that this is the most talked about subject amongst Expats! Unfortunately, this is why you will hear or have heard so many different stories that would have been distorted under Chinese whisper tradition so unless you hear from a professional, don't trust it!!

As we say in France: "A happy family is a family that hasn't inherited yet" so make sure you deal with it while you are still alive!!
Although there has been a change of law, which enables you to choose British rule on inheritance, it's not all plane sailing as French taxes still apply so let's have a look at its implication and solutions.
First, I will explain the French inheritance law, its particularities and taxes, then, I will give you all the solutions! So, don't panic as you read this, they are lots of solutions and do remember that French people have lived with this law since Napoleon!! And yes, we survived!
Please note that these explanations are plain and do not take into account what you have already done with your notaire. So, this is what happens if you have done nothing.

1. Assets involved:
If you are a French resident (more than 6 months per year in France), then you are subject to the French inheritance law for all your assets in France and all your movable assets worldwide! That means that your savings in the UK are subject to French inheritance law as they are movable, but if you have a property in the UK, it will be subject to UK inheritance law (if people who inherit are not French residents).
If you have a holiday house in France (meaning you are not French resident), then only your house in France will come under French inheritance law and your bank account in France will be subject to UK law.
In France, your estate is comprised of assets minus your debt. It is the job of the notaire to ascertain your estate and who are your heirs. It is possible to inherit debts!!
2. Marital status:
A Marriage regime (regime matrimonial) is a bit like a marriage contract and there are 5 different ones in France. Under European law British nationals are under the regime called "Separation de biens" meaning Asset splitting. That basically means that whatever is in your name is yours and will stay yours after the death of your spouse. That is why it is important to have money accounts in both names (mr OU mme) or one each with about the same amount on each (as the one of the deceased will be blocked).

3. No Children:
You can leave your estate to whoever you want. Must be individuals or charities (no pets!).
The only problems you will have is in regard to the taxes (see last chapter).
4. Children:
You have children. Under French law, they are entitled to a minimum percentage of your estate. We call this percentage the "part reservataire": the reserved part. This % depends on how many children you have. They have priority over your spouse! For example, you have assets worth 100,000€ and 2 children, then they have to inherit at least 66 666€ (33 333€ each). If you do nothing, children automatically have ¾ of your assets.

Children	Minimum %
1	50%
2	33%
3+	25%

5. Spouse:
If you haven't done anything and have children, your spouse is only entitled to a 1/4 of your estate. If you only get married once and the children are from this marriage, then the spouse has the choice between ¼ of your estate or the totality of your estate in Usufruit (see chapter 7). If you have children from previous marriage, this usufruit option is not available automatically (see solutions below)
6. Orders of Heirs:
If you do nothing (a will for example), then French law will determine who inherits your assets. There is an order of priority:

- Children
- Parents (if your parents are still alive, they can inherit ¼ each)
- Spouse (see above)
- Brothers/ sisters
- Nephew/nieces
- Uncle/aunts
- Cousins
- State

As an example, if you are single with no children, your parents are dead, then your siblings inherit. If your siblings are dead, then your nephew and nieces inherit. If they are dead, the cousins, if no cousins, then great cousins, etc….. It is the job of the notaire to find an heir. It is only when they can't find anybody that the state inherits.
Note that partners are not recognized by law and therefore do not inherit anything from each other. In France, you need to be married or PACS (civil agreement).

7. Usufruit:
Understanding the term of usufruit(use of fruit) and nue-proprieté(naked property) is not easy! Imagine an apple tree and if you inherit the usufruit, it means that you inherited the apples. If you have the nue-proprieté, it means you have inherited the tree without any apples! In the case of a house: you purchase this house 50/50, you die, then your spouse (first marriage and children from this marriage) can chose between ¼ of your 50% of the house or the totality of your 50% in usufruit. It means your children inherit your 50% but cannot do anything with it therefore your spouse has the total use of it. Where it gets complicated is when you wish to sell as you need the agreement of a majority of the children (not all of them anymore). Usually they say yes as it means they will get a % on the sale of that property. This % is calculated with the age of the usufruit person. As the apples get older, the value of the apple diminishes!!

Age	usufruit value	nue propriete value
51-61	50%	50%
61-71	40%	60%
71-81	30%	70%
81-91	20%	80%
91+	10%	90%

So, if you are selling the house after you inherited the usufruit of the half of the deceased, you only get the % according to your age. Imagine the house is worth 200 000€, you are 75, then you keep 130 000€ on the sale and your children 70000 between themselves. 100 000 for your half and 30 000 for the usufruit as you are between 71 and 81. If the usufruit person does not sell the house before she or he dies, then, automatically the apples rejoin the tree
meaning your children already inherited half the house and will then be fully owners of this half (they don't pay tax on inheriting the usufruit).
Allowance Tax/death duties

8. Taxes:
You thought all the above was bad; well here comes the worst bit!! Please note that the changes that have applied in 2015 did NOT change this.

	Allowance €	Tax/death duties
Children/parents	100,000	5-20% (mostly 20%)
Brothers/Sisters	15,932	35 – 45%
Nephew/nieces	7,967	55%
Others	1,594	60%

In the UK, the allowance is for your total assets; here in France, the allowance is for the person that inherits and the amount is depending on their relationship to you.
Good news is: No death duties between spouse, Pacs partners or French registered charities.
Sad news is: 60% tax between partners (not married or Pacs). So, if you have bought a house on Tontine and are not married or Pacs, the survivor of the two will have to pay 60% tax on the half of the house he or her will inherit!
Please also note that those allowances are per person so if you buy a house 50/50 (without Tontine), then the children have 100000 each on the first death and then another 100000 each on the second death.
Example 1: a couple in their mid 70's have 500 000€ of assets and 2 children. On the first death, the survivor chose the usufruit so the children inherit 87500 each (70% of 250000) so no tax, on the second death the children inherit 125 000 each so less than 5 000€ tax each (between 0 and 15 000, only between 5 and 15% tax).
Example 2: The same couple but with one child each from a previous marriage. On the first death, the survivor gets ¼ on 250 000 (62 500) and the child of the deceased ¾ so 187 500 so about 17 500 tax. On the second death, the other child inherit 312 500 (250 000+62 500) so 42 500 tax.

SOLUTIONS

Well done, you are still reading this and did not suffer a nervous breakdown while waiting for all the lovely solutions!

1. Testament/Will:

Making a will in France is easy, it needs 3 conditions: be handwritten, dated and signed! So, you can do it yourself (in French is best). If you have no children there are no restrictions to who you want to name on your will but be careful with the taxes (chapter 8 above. If you have children, you need to respect the share available and reserve part (see chapter 4) or do a will stating you want UK law to prevail (see chapter 7 below). A will cost around 90 euro to be registered with a notaire.

2. Tontine:

This is usually the most popular solutions used by expatriates but must be installed when you purchase the property but it only protects the property. It is a very weird clause that is included in your deeds of the house (called clause d'accroisement in the deeds). This clause says that the first one that dies was never in the deeds before; therefore, the survivor is the sole owner of the property. It is a good solution for protecting your spouse from the children.

Be careful if you have children from a previous marriage as this option will disinherit the children of the one who dies first. If the survivor wishes to live something to those children on the second death, those will be taxed 60% as they are not the children of the survivor but the children of the first deceased.

And do be careful with the tax as this solution makes it that the children only inherit on the second death and therefore only have one allowance of 100 000€ (one parent).

3. Change marital status:

You can change your marital status (chapter 2 above) to a "regime Universel avec clause d'attribution integrale". It is like a tontine but for all your assets not just the house. It would mean that whatever belongs to you belongs to your spouse so on the first death, the spouse is the sole owner. It is not recommended when you have children from previous marriage (as you would disinherit the children of the first deceased) or if you have assets worth more than 100 000 per child (as they would have to pay 20% on what is above this allowance).

4. Donation dernier vivant/Donation entre époux:

This is a MUST if you have children from previous marriage. As I explained above (chapter 5), only couples with children from the same marriage have the option of usufruit. So, you can sign this contract (a bit like a will) which gives the option of usufruit on half of the assets belonging to the deceased to the survivor. It actually gives 3 different options to the survivor:

- ¼ in full property and ¾ in usufruit
- The share available in full ownership
- The totality in usufruit

It has to be done by a notaire and cost around 175€. It has to be done for the one that has children from a previous marriage. If you both have children from previous marriage, then it will be 350€.

5. Donation:

A good way to avoid the tax/death duties is to donate your assets to your children as you are
still alive. You can give as much as the allowance (100 000 per child) every 15 years and once
you have made the donation you can't die for 15 years!!! You can give the Nue propriete to
your children and keep the usufruit which enables you to give more as the value of the nue
propriete is a % of the value of the assets you donate.

6. Assurance Vie:

This is the most popular solution amongst French people to avoid tax and protect your spouse in regard to the savings. This is a normal investment composed of secure earnings (around 2.5%), shares or bonds but it has the particularity of being able to name beneficiaries of your choice. For the money you invest before you are 70 years old, the allowance is 152 500€per beneficiaries (on top of the allowances given by French inheritance law) and the beneficiaries will only pay 20% tax on what is above 152 500. Otherwise the allowance is only 30 500€ for all the money you put in after you are 70 years old and what is above is added to the assets inherited.
This is a huge tax saving when leaving legacies to unrelated beneficiaries such as friends or step children who would normally pay 60% tax.
They are also other advantages to this saving in regard to income tax (but that is another subject).

7. 17th August 2015

Most will have heard that since the 17th of August 2015, you are able to choose the law of your native European country regarding inheritance law. It basically means that you will not be subject anymore to the minimum percentage you are obliged to give to your children which is the French inheritance rule.
If you don't have any children, it does not change anything! As under French law, you can then give to whoever you want (for that, you simply need to make a will).
To be entitled to this change, you need to make a will in France stating you want to adopt your native law and must name an executor.
French Wills need to be hand written, dated and signed so you could do it yourself but it only cost around 90 euro to have it registered through a notaire so why not! (and the notaire will help you write it).

LA RESERVE HEREDITAIRE (update 2021) [1]

As noted above in section 7, a major change to forced heirship was the European succession law 650/2012, which came into force on 17 August 2015 for all EU countries other than Ireland, the United Kingdom and Denmark, who opted out.

This change allowed people to choose their national legislation to settle their estate (article 22) rather than the legislation of the country in which they resided. For instance, a Japanese resident of France could choose Japanese law to settle their estate rather than French law, or an English citizen resident in France could choose English law to settle their estate. A key implication, however, is that their worldwide assets would also be governed by one unique law.

In 2020, there was an important reform, made by the French Government, to this regulation. One of the issues addressed was the discrimination suffered by women under Sharia law (Islamic succession law), which prescribes that women inherit only half of what their brothers do from parents.

France has a history of immigration from North African countries, so it emerged that Sharia law could be used within the scope of the EU regulation to give an advantage to sons over daughters. Therefore, a member of the Government introduced a bill in November 2020 to reinforce women's legal rights and prevent them from suffering discrimination due to the application of Sharia legislation.

However, in considering and approving this bill, the Government did not think about any other legislation - i.e. common law - and introduced a bill to reinforce children's legal rights in France and protect the reserve hereditaire. As such, by fighting discrimination against women, the Government inadvertently created a bombshell by overruling any other legislation that does not observe the reserve hereditaire.

How does the reform work?

The bill, introduced in November 2020, provides a mechanism to compensate children, under two conditions when the settlement of an estate in France could be governed by a different law. A new subsection to the article 913 of the Civil Code was created, with the following provision:

When the deceased, or at least one his children, is, at the time of death, a national of a Member state of the European Union or has his/her habitual residence there, and when the foreign succession law does not know a mechanism with a reserved portion protecting the children, each child (or his/her heirs, or those who benefit from his/her rights) can use the assets which are located in France to obtain a compensation at the time of death, in order to benefit from the forced heirship rights which they have under French law, within the limits of these rights.

Under this legislation, a child can challenge the provisions of their parent's will, should it disinherit or provide them less than their legal rights under French law, if both conditions are fulfilled. The compensation mechanism only applies to assets located in France, and the compensation only applies to French assets.

What are the two conditions?

1. Geographic criteria: The reform applies if:

- The deceased has his habitual residence in a member state of the EU (France for example), or has the nationality of a member state of the EU, or

- One of his children has his habitual residence in a member state of the EU (France for example), or has the nationality of a member state of the EU

2. Absence of forced heirship in the foreign law:

- The chosen law by the deceased does not know the concept of forced heirship, such as common law. If the criteria are fulfilled, the children, who may have been disinherited, can use the compensation mechanism to recover their reserve hereditaire from French assets.

When will the reform apply?

The bill was introduced in November 2020 and passed with the French National assembly (AssemblÃ©e Nationale) on 23rd July 2021. Several Senators challenged it before the Constitutional Council. Unfortunately, the challenge did not specifically address the provision of the article 13, i.e. forced heirship rights. The reform was approved on 13th August 2021 by the Constitutional Council. It will come into force on the first day of the third month following the publication of the present reform, so expect it to be in force by the end of 2021, or early 2022.

The reform will only apply to any new succession that is opened from the day that it is in force. Any current succession remains governed by the present EU regulation 650/2012 and children would not be able to claim any right over their parent's estate.

Examples of the impact of the reform in practice

1. Mr and Mrs Smith, UK nationals and French residents, have children from previous marriages who all live in the UK. They made a will electing UK law, in order to disinherit some of the children. Mr Smith died in France after the reform came into force. As such, his children will be able to claim their forced heirship on the French assets because he died in France, his habitual residence.

Some may deduce that the solution would be to go abroad to die, in order to avoid the legislation. Considering the concept of residence in France. It is doubted that moving abroad temporarily would resolve the problem; the children would probably be able to evoke a fraud.

2.Mr and Mrs Trump, US citizens who reside in Florida with children from previous marriages (all US residents) own a second home in France. They both made a will to disinherit some of the children. Mr Trump died in Florida, after the reform came into force.

As such, Mr Trump will be able to disinherit his children and the reform will not apply because he did not reside in France and was not an EU national .

3. Mr and Mrs Auckland, Australian citizens, reside in Australia. They have children with dual nationalities (Australian/Italian) and own a property in France. They made a will disinheriting one particular child. Mr Auckland died in Australia.

In this case it is thought that the child who was disinherited could claim his share over the French assets because he has the nationality of a member state of the EU (Italy).

Conclusions

From a purely legal perspective, the imminent reform raises several questions of compatibility with the recent legislation and court cases. France ratified EU regulation 650/2012, which enables a person to choose a different legislation to settle their estate, so how will the reform be accommodated within this context?

The reserve hereditaire has already been challenged. After two famous court cases (27.09.2017), it was confirmed that a foreign law which ignores forced heirship is not in itself contrary to French international public order and can only be ruled out if its concrete application in a specific case leads to a situation that is incompatible with the principles of French law. By principles, the Court pointed out the fact that a child, who was disinherited, would be in a precarious situation.

From a practical aspect, the reform will redefine estate planning advice, and may push some to leave France if there is no option to protect their estate from unwanted heirs. However, a specific question of constitutionality may be raised in the future regarding article 13, or a 'fresh refurbishment' of succession law may be implemented by a new President in 2022.

Some EU countries, such as Belgium, have already changed their legal system to provide more flexibility for a testator to distribute their estate without completely removing the reserve hereditaire.

Ideally, France will follow this example and evolve with modern times, as the 19th century legislation it currently adheres to is no longer appropriate or relevant.

[1] Extract from https://www.francetaxlaw.com/news/la-reserve-hereditaire/