

# Swiss Inheritance Law Reform

## // More flexibility in estate planning and pitfalls under the new inheritance law

The current Swiss inheritance law is over a century old and will be adapted to changed needs of society. The revised inheritance law will enter into force on 1 January 2023 and will add greater freedom and flexibility in estate planning. This is a welcome development. Yet it is important to be aware of certain pitfalls since actions are required in certain situations in order to benefit from the new provisions.

Key points at a glance:

### **Personalized estate planning due to reduced forced shares**

The “forced share” or “compulsory share” (*Pflichtteil*) is the portion of the estate to which certain heirs, such as descendants and spouses, are entitled by law. In estate planning this can be a considerable restriction on the testator’s individual wishes.

The main focus of the revised inheritance law provisions is therefore on reducing these forced shares. The forced share for the descendants will be reduced from 3/4 to only 1/2 of the “intestate share”, i.e. the portion of the estate attributed by law to statutory heirs if the decedent dies without a will (*gesetzlicher Erbanspruch*). The parents’ forced share will be eliminated entirely. The forced share for spouses or registered partners will, however, remain unchanged at 1/2 of the intestate share.

The reduction of the forced share means that at least half of the estate can be freely disposed of, subject to appropriate estate planning. In the future, testators will therefore enjoy greater freedom in deciding who will inherit how much of their estate, resulting in significantly increased flexibility in estate planning. For example, cohabiting partners, stepchildren in patchwork families, godchildren, etc., can benefit from a larger share of the estate or philanthropic interests can be met in a more targeted manner.

However, possible inheritance and gift tax consequences should not be disregarded. In most cantons, high inheritance and/or gift taxes are levied on legacies, bequests or any type of donations to distant relatives, and especially to non-relatives such as cohabiting partners. These taxes can be minimized with appropriate planning. In the case of philanthropic gifts, it is also advisable to analyse the gift and inheritance tax consequences in advance in order to minimize taxation on the transferred assets and to avoid joint-and-several liability of heirs and/or donors as far as possible. Allocations to charitable institutions domiciled in other cantons are often only tax-exempt if the other canton has a reciprocal right to tax exemption.

**Beware: No change in the intestate share of parents**

Although the revised inheritance law will abolish the parents' forced share, the intestate share of parents or of the parents' descendants will remain unchanged at 1/4. This is particularly important for individuals and married couples and/or registered partners without descendants, in the absence of a will or inheritance agreement. Especially in the case of married couples or registered partners without descendants, it cannot be taken for granted that the surviving spouse or registered partner will automatically become the sole heir in case one of them passes away. This is not the case: the surviving spouse or registered partner receives (only) 3/4 of the estate by law. 1/4 of the estate is inherited by the deceased spouse's or registered partner's parents (or by their descendants in case the parents predecease them). Testators who wish to leave their entire estate to their surviving spouse, registered partner or cohabiting partner must stipulate so in a will or inheritance agreement. Furthermore, any inheritance tax consequences should be considered when appointing a cohabiting partner as a beneficiary.

**More flexibility in family business succession**

By reducing the forced shares and increasing the disposable share, transfers of family businesses are facilitated. In the future, succession arrangements in family businesses will be simpler and more flexible. It is particularly advisable for business owners to take advantage of such increased flexibility in estate planning and to make the necessary testamentary arrangements, if desired. Further flexibility will follow the enactment of the planned revision of corporate succession law.

**Upon opening of divorce proceedings:**

**Possible forfeiture of a spouse's entitlement to a forced share**

According to current inheritance law, spouses or registered partners hold reciprocal inheritance claims and entitlements to forced shares until a final divorce or dissolution decision is issued. Under the new inheritance law, the surviving spouse or registered partner may already lose the entitlement to a forced share if divorce or dissolution proceedings were pending at the time of death of their spouse or registered partner. However, the elimination of the forced share is not automatic. Rather, spouses must initiate such measures in the divorce proceedings and expressly arrange in a will for their separated spouse to be deprived of his or her forced share as soon as divorce proceedings are pending. Otherwise, in the event of death during divorce proceedings, the separated spouse will retain the statutory inheritance entitlement.

**Restrictions to make gifts after entering into an inheritance agreement**

According to current case law, future testators may, in principle, continue to freely dispose of the estate and make gifts during lifetime even after entering into an inheritance agreement. The revised inheritance law will change that: the testator's freedom to dispose of the estate will be severely restricted after entering into an inheritance agreement.

In principle, it will always be possible to challenge testamentary dispositions and gifts during lifetime with the exception of customary gifts (*Gelegenheitsgeschenke*) if such dispositions and gifts are incompatible with the obligations of an inheritance agreement and not expressly reserved by such an agreement. Before entering into an inheritance agreement, it is therefore important to ensure that the agreement clearly stipulates whether, and to what extent, the testator may continue to freely dispose of the assets during his or her lifetime. Existing inheritance agreements should be reviewed and amended if necessary.

### **Tied private pension provision (pillar 3a)**

There has been legal uncertainty in the treatment of benefits under tied pension plans (pillar 3a / *gebundene Selbstvorsorge*) due to the different types of pension plans (banking solution vs. insurance solution). This will be clarified in the revised inheritance law. Regardless of the type of pension plan (banking or insurance solution), all beneficiaries will hold a direct personal claim against the bank or insurance company. Pillar 3a benefits will therefore be excluded from the distributable estate and paid out to the beneficiaries upon the death of the pension holder in accordance with the ordinance BVV 3. It should be noted, however, that pillar 3a benefits will still be relevant for the calculation of any forced shares and will be taken into account with the surrender value (insurance solution) or the corresponding capital savings (banking solution).

From a tax point of view, any pillar 3a benefits will be subject to income tax rather than inheritance tax. In most cantons, income tax is more advantageous than inheritance tax in connection with distant relatives and non-relatives such as cohabiting partners. Appointing your cohabiting partner as a beneficiary under pillar 3a may therefore be an attractive tax planning option.

### **Outlook and need for action**

The new regulations will be applicable upon demise after 1 January 2023 and will thus also apply to wills and inheritance agreements drawn up before that date. It is therefore advisable to carefully review existing wills and inheritance agreements and to analyse whether adjustments are required and how the new flexibility in estate planning can be optimized to meet personal needs.

If heirs are set to the forced share in existing wills or inheritance agreements the reduced forced shares will apply in the event of death after 1 January 2023. If the previous forced shares are to be applied, this must be stipulated accordingly in the will or inheritance agreement.

It would be a pleasure to assist you with your estate planning and answer any questions you may have.

STAIGER Attorneys at Law, November 2021



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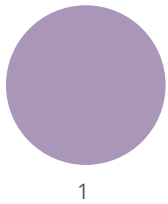
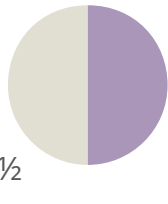

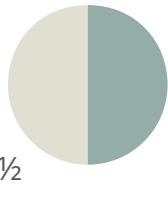
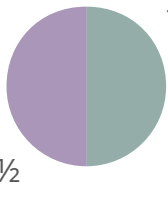
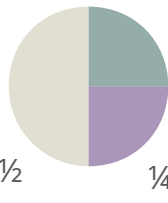
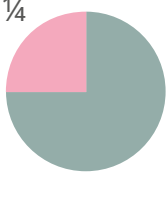
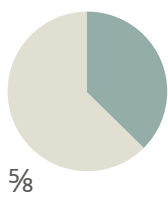
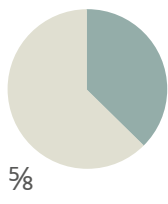
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## Overview of the new forced shares

Decedent's heirs:	Intestate share	Forced share / freely disposable share
<b>Descendants</b>	 <p>1</p> <ul style="list-style-type: none"> <li>descendants</li> </ul>	 <p><math>\frac{1}{2}</math></p> <ul style="list-style-type: none"> <li>descendants</li> <li>freely disposable</li> </ul>
<b>Spouse / registered partner</b>	 <p>1</p> <ul style="list-style-type: none"> <li>spouse</li> </ul>	 <p><math>\frac{1}{2}</math></p> <ul style="list-style-type: none"> <li>spouse</li> <li>freely disposable</li> </ul>
<b>Spouse / registered partner + descendants</b>	 <p><math>\frac{1}{2}</math></p> <ul style="list-style-type: none"> <li>spouse</li> <li>descendants</li> </ul>	 <p><math>\frac{1}{4}</math></p> <ul style="list-style-type: none"> <li>spouse</li> <li>descendants</li> <li>freely disposable</li> </ul>
<b>Spouse / registered partner + father and/or mother</b>	 <p><math>\frac{3}{4}</math></p> <ul style="list-style-type: none"> <li>spouse</li> <li>mother/father</li> </ul>	 <p><math>\frac{3}{8}</math></p> <ul style="list-style-type: none"> <li>spouse</li> <li>freely disposable</li> </ul>
<b>Spouse + siblings</b>	 <p><math>\frac{3}{4}</math></p> <ul style="list-style-type: none"> <li>spouse</li> <li>siblings</li> </ul>	 <p><math>\frac{3}{8}</math></p> <ul style="list-style-type: none"> <li>spouse</li> <li>freely disposable</li> </ul>