

Notaires always act with an overall approach concerning their client's assets, by securing their durability and providing long-term solutions. This global vision also generates legal security and durability thank to skills that notaires keep developing to perform their mission. This is why the notaires who are involved in providing succession-related advice follow, in addition to their specialist legal studies (in particular family law, the law of property and tax law), special training courses.

In order to provide estate planning advice, notaires, as public officers, ruled by professional bodies and by the Ministry of Justice, must comply with the same rules and ethics as for their other activities: integrity, independence, refraining from canvassing, avoiding any confusion with activities that would be incompatible with their status. These ethical rules provide clients with guarantees of security and quality of the legal service provided by notaires.

## *The notaire's main areas of work*

French notaires give legal force to the deeds they draft and seal in a very wide range of activities:

- **Family matters**, like pre-nuptial agreements, wills, gifts, divorce settlements, and Probate, are notaires' traditional fields of expertise and represent 26 % of their global activity.
- **Real estate** is a major part of notaires' practice, and do not only cover conveyancing, but also negotiation, draft of pre-sale agreements and of deeds of sale.
- **Business matters**, a less known expertise of French notaires who have a comprehensive vision of corporate matters, which also covers directors personal queries (like tax advice and estate planning applying to both personal and professional assets).
- **Rural matters and environment**: notaires also provide appropriate solutions in order to promote agriculture :
  - they have created a national agricultural data base for the estimation of farms values,
  - they have imagined a specific type of lease in order to better protect the farmer in such circumstances,
  - they can seal a "hand-over credit plan" under which, if certain legal conditions are fulfilled, it is possible to sell a farm and benefit from tax advantages.
- **Local authorities**: notaires are also implied in advising such bodies, in providing them
  - Legal and specific advice concerning urban or regional planning, environmental issues, etc.
  - Deeds with the related responsibility.

# French forced heirship rules

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## When French Inheritance Law applies to non-French Citizens

Under French private international law, upon the death of a non-French citizen any property owned in France, must be bequeathed to his/her heirs.

### “La reserve”

Under French inheritance law, one part of the estate of a deceased is reserved to his/her children (if not: to his/her parents):

- if the deceased has one child, half of the estate must go to him/her.
- if the deceased leaves two children, two thirds of the estate must be bequeathed between them (one third each).
- if the deceased leaves three or more children, three-fourths are “reserved” to them.

## How to avoid French forced heirship rules?

There are several options which a French Notaire can explain to you, which include the following and apply inter alia to British citizens:

(1) purchase the property under a “tontine”, which is in some way the equivalent of the English concept of joint ownership (even if it is less tax efficient),

(2) if the purchaser does not plan to be domiciled in France but decides to remain domiciled for example in the UK: purchase the property through a company (preferably incorporated in France, like a société civile immobilière (SCI) for instance) because the company’s shares, being subject to French law as movable assets, will be governed by the inheritance law of the domicile of the deceased.

*“A French Notaire is able to explain how to avoid forced heirship rules”*

(3) Sign a deed before a French Notaire where you can elect, within French law, a special status (“régime de communauté avec clause d’attribution au survivant”) to govern your French property between you and your spouse, so that this property passes onto your wife or husband and enables him/her to avoid French forced heirship rules.

(4) Last, but not least: a new succession Act voted in 2006 and applicable from January 1st, 2007 enables the children of a person to sign a notarized deed (“Renonciation anticipée à l’action en réduction”) by which they will entitle their father and/or mother to give to (an)other child/children more than he/she is normally entitled to receive under French law. By doing so, the signatory waives the claim on his/her share of the reserve against his/her sister(s) or brother(s) and against his/her parent(s).

‘La réserve’ exists in many countries governed by Civil Law such as Germany, Switzerland, Italy, Spain, etc.

Introduced in France in 1804, with the civil code (“Code civil”), this protection of the children was so powerful that it was forbidden, even for the children themselves, to waive this right.

Since January 1st, 2007, it has been possible to waive the “réserve”; but remains a very sensitive matter, which is strictly ruled by Statute, and needs to be drafted by and signed before a French Notaire.

The Notaire’s role is key as a family advisor and is essential in supporting and advising in your estate planning.