
Inheritance law in Denmark



**Who inherits if there is no will
and how do you make a will?**

Ulrik Grønberg and Kristian Ravn-Petersen, Advokaterne Sankt Knuds Torv

1. Who inherits if there is no will?

Intestate succession is governed by the Danish Inheritance Act. The Danish Inheritance Act ('Arveloven') of January 1, 2008 covers Denmark, but not the Faroe Islands or Greenland. Denmark is a member state of the European Union but has not adopted European Succession Regulation 650/2012 ('Brussels IV'). The EU Regulation may, however, be applicable to the estates of Danish citizens who are resident of another EU member state.

If the deceased was married and did not have separate property as a result of a prenuptial agreement or conditions of a deed of gift or will, a division of matrimonial property is the first thing that takes place. Half of the spouses' total net assets constitutes the estate of the deceased. This then becomes subject to division between the heirs. The surviving spouse is also an heir.

If the deceased was married

If the deceased was married, but did not leave any children/descendants, the spouse inherits the entire estate. If the deceased was unmarried, but had descendants, his/her descendants inherit everything. Unmarried couples are not intestate heirs of their partner, unless they make a will that includes them.

If the deceased was married and had descendants, 50 per cent of the estate of the deceased goes to the surviving spouse and the other 50 per cent goes to the descendants. The surviving spouse keeps half of the spouses' combined total net assets, and inherits 50 per cent of the half of the estate that constitutes the estate of the deceased. The surviving spouse ends up with 75 per cent of the spouses' total matrimonial property while the descendants inherit 25 per cent of the spouses' total matrimonial property.

If one of the children has died

If one of the children has died before the testator/trix, his or her children will succeed to the share of the predeceased child. The distribution is per stirpes. There is no difference between adopted children and biological children, regardless of being born within or outside marriage.

If the deceased was unmarried and had no descendants

Only if the deceased was unmarried and had no descendants, are the parents of the deceased entitled to inherit. If the deceased leaves no spouse or children, the estate will be inherited by the parents of the deceased. If one of the parents has died, the deceased parent's (other) children succeed in that share. If the predeceased parent leaves no (other) children, the other parent (or his or her other children) will succeed to the entire estate.

If there are no surviving relatives

If there are no surviving relatives in the line of parents or their descendants, the estate will go to the grandparents of the deceased or their children. Intestate succession stops with the children of the grandparents (siblings of the deceased's parents) – the cousins of the deceased are not legal heirs. If there are no legal heirs, the inheritance goes to the Danish state.

Compulsory legal heirs

Danish law provides for compulsory legal heirs. The spouse and the descendants are compulsory heirs, which means that they cannot be disinherited without their written consent. All other legal heirs (parents etc.) can be disinherited by writing a will.

The compulsory share is 25 per cent of the estate of the deceased. The compulsory share is divided between the surviving spouse and the descendants. Or to put it another way: If the testator/trix leaves a spouse and/or descendants, he or she may freely dispose of only 75 per cent of the estate in a will.

2. How do you make a will?

Four types of wills are described in the Danish Inheritance Act:

1. Wills signed before a notary

2. Wills signed before two witnesses

3. 'Emergency wills,'

4. Wills that only concern household items and personal effects.

Some remarks regarding mutual wills

Mutual wills are recognized (and very common) in Danish law. All the four types of wills mentioned above can be made as either a mutual will or a single will. Typically, Danish couples

(cohabiting couples or spouses) make one mutual will, expressing their mutual wishes.

A mutual will is a single document executed by two people, which has effect in relation to each signatory's property on his or her death.

A mutual will typically expresses a couple's mutual intention of wanting to ensure that the surviving person inherits as much as possible. Also, a mutual will (normally) expresses a mutual wish as to how the estate is to be divided when the survivor dies.

Mutual wills are mutually binding – it is part of the will writing process for the two parties to agree on whether their mutual will is partly or fully irrevocable by the survivor following the

first death. It can be agreed that following the first death the survivor is constrained in his or her ability to make a new will/revoke the mutual will.

1. Wills signed before a notary

The most common type of will is wills acknowledged before a notary public. The will is usually prepared in cooperation with an attorney, after which the testator/trix signs the will before the local notary. The notary witnesses the signing of the will and assures that the testator/trix is of sound mind to execute a will. In Denmark, the office of notary is not carried out by attorneys or other private individuals, but by the local Probate Court. The notary's fee for witnessing and filing the will in the



national will register is fixed, DKK 300 (about € 40). A will signed before a notary is difficult to contest.

2. Wills signed before two witnesses

A will can also be signed before two witnesses who are not related to the heirs or in other ways connected with the heirs. Both witnesses must be present when the will is signed. The witnesses must be aware that they are witnessing the signing of a will. Immediately after the testator/trix has signed the will, the witnesses must sign the will. The testator/trix must file the will him-/herself and ensure that it will be found after his/her death. Only wills signed before a notary can be filed with the national register of wills in Denmark. Wills signed before witnesses are more often contested than wills signed before a notary – which is also a reason why notary wills are much more frequently made than wills before witnesses in Denmark.

3. Emergency wills

Where illness or an emergency prevents the execution of a will before

a notary or before two witnesses, an emergency will may be made in any form. Any indication from the deceased that expresses a testamentary disposition that can be sourced to the deceased is valid. This may be a testamentary disposition made in writing or orally, or could be by use of video, text, e-mail, phone, or other means of communication.

It is a condition that it can be proved that the testator/trix was in a situation which made it impossible to find two witnesses or to meet with a notary. If a person commits suicide, it will be considered an emergency, and a farewell letter or another declaration from the individual in question will be considered a valid emergency will. Emergency wills will lapse if, within a three-month period of the execution, there have been no circumstances preventing the execution of the will in accordance with the rules for making 'ordinary' wills.

4. Wills that only concern household items and personal effects

If the testator/trix only wants to distribute household items and personal

effects, only few requirements exist regarding the will. It does not have to be signed before a notary or two witnesses to be valid. It only needs to be in writing, dated and signed. It is a condition that the will covers only household items and personal effects. Collections of paintings, etc., are not considered household effects. A will regarding household effects and personal effects can be an informal supplement to an existing will signed before a notary.

Revocation of wills

A will may be revoked or amended only by execution of a new will or codicil. An informal expression of an intention to revoke the original will (e.g. crossing out one or more parts of the will) will not be accepted as a valid revocation.

In the event of divorce, a will executed by one spouse to the benefit of the other spouse will be considered revoked. The same rule applies for unmarried cohabitants if they break up later on. If it is a mutual will, the will is automatically annulled with effect for both parties.





A civil partnership and its termination will have the same effect on a will as a marriage and its legal termination. A mutual will should include stipulations as to whether the surviving spouse can change the will. If this is not the case, the Inheritance Act contains some limitations to what the surviving spouse may change. If the surviving spouse exceeds these limits, the heirs may dispute the actions of the surviving spouse. If the surviving spouse has issued a new will, the will may be invalid. If the surviving spouse has given inter vivos gifts, it may be possible to demand the returning of such gifts.

Trusts and wills in Denmark

According to Danish law, it is possible to establish charitable foundations in a will, but not ‘trusts’ of the types known in other countries. According to the rules in Denmark, an irrevocable and effective separation from the person establishing the foundation must be ensured when a foundation is established – a Danish foundation must not benefit the founder or the founder’s family.

It is possible to leave money/property to an existing foundation or charity. No inheritance tax is payable. A lar-

ge part of the revenue base of major NGOs originates from inheritance.

The national register of wills in Denmark

Denmark has a national register of wills. If a will is executed before a notary (in Denmark a notary is an employee at the Probate Court), the will is kept in the Court’s records. The will is also entered in the Danish National Central Register of Wills—Centralregistret for Testamenter. The fee is fixed, DKK 300 (€ 40). There is only one fee, even if the will is a mutual will for two people in one document. In registering the will in this manner, it is guaranteed that the will can be located upon the death of the testator/trix.

Among other things, because the register covers only wills signed before a notary, wills signed before a notary are much more common in Danish law than wills signed before witnesses. It is estimated that 97 per cent of all Danish wills are signed before a notary.

How do you normally make a will in Denmark?

In practice, the attorney will prepare the will for the testator/trix, after

which the testator/trix visits the court notary who will witness the signature and assure the competence of the testator/trix. The will is always signed in duplicate with the notary. One original is filed with the court register, whereas the testator/trix receives the other original for his/her own files.

3. Community Property between Husband and Wife – and “Uskiftet bo”

The Danish property regime is community property. When marriage terminates (divorce or death), each party is to receive 50 per cent of the total net property of the two spouses. Only pensions are exempt from this distribution.

Spouses may execute a marital agreement (ægtepagt), either before or during their marriage, stating that another division of property shall apply between them.

The surviving spouse keeps his/her 50 per cent. The 50 per cent that constitutes the deceased’s estate are distributed according to his or her will or the rules governing succession on intestacy.

“Uskiftet bo”

If the spouses have community property, the surviving spouse has an advantage according to Danish law: The surviving spouse has a right to choose not to divide the deceased’s estate between heirs and instead choose to retain undivided possession of the estate of the deceased (uskiftet bo). This rule is often applied in Denmark and roughly 22 per cent of all estates remain undivided. The purpose of the rule is to shorten the duration of estate administration and at the same time make it easier for the surviving spouse to maintain a stable financial position.