

## Last Will and inheritance: answers to the most important questions

The Committee for UNICEF Switzerland and Liechtenstein (hereinafter referred to as "UNICEF Switzerland and Liechtenstein") frequently receives inquiries about how to favour UNICEF in a last will. Below you will find information on the most important questions relating to inheritance matters. We will be happy to answer any further questions you may have at any time.

### Why is a last will useful?

Without leaving a last will or inheritance contract, your estate will be divided among your legal heirs. If the testator leaves no heirs, their estate passes to the community (your last canton or municipality of residence). Below you will find an overview of the legal heirs:

### Legal heirs (without leaving a last will)

The legal heirs are the descendants of the testator, the parental line (i.e. the parents or, if they are deceased, the testator's surviving siblings), and the grandparental line. If the testator leaves a surviving spouse behind, the spouse is also a legal heir and is entitled to a specific statutory inheritance. The community is the last legal heir and only inherits if there are no other legal or appointed heirs.

For example:

The deceased leaves behind only a spouse:  1/1 spouse	The deceased leaves behind only children:  1/1 children <sup>1</sup>	The deceased leaves behind a spouse and parents:  3/4 spouse 1/4 parents <sup>2</sup>
The deceased leaves behind a spouse and siblings:  3/4 spouse 1/4 siblings <sup>2</sup>	The deceased leaves behind a spouse and children:  1/2 spouse 1/2 children	The deceased does not have any legal heirs:  1/1 freely disposable (according to last will) <sup>3</sup>

<sup>1</sup> Children inherit in equal shares; predeceased children are replaced by the grandchildren or great-grandchildren (if any)

<sup>2</sup> Inherit in equal shares

<sup>3</sup> Otherwise the estate passes to the community

### What is an inheritance contract?

An inheritance contract is an agreement between the testator and their future heirs. The inheritance contract must be publicly notarized by a notary public and be signed by the parties in the presence of the notary public and two witnesses in order to be valid.

### What are the differences between a last will and an inheritance contract?

A last will is a unilateral testamentary disposition: the testator determines the

future distribution of his estate on their own. A last will can be drawn up anytime and be amended freely, by hand or by public notarization in front of a notary public. An inheritance contract is a bilateral legal act and must always be publicly notarized by a notary public in order to be valid. As an agreement between the testator and the future heirs, the inheritance contract can only be amended jointly by the contracting parties. It offers security against premature changes of mind by one of the contracting parties.

**When does it make sense to draw up an inheritance contract?**

With an inheritance contract, spouses can appoint one another as beneficiaries and as sole heirs, for example. Both spouses can agree that a charitable organization, such as UNICEF Switzerland and Liechtenstein, may inherit after the death of the other spouse provided that the compulsory portions of heirs with forced heirship rights are preserved. A waiver of inheritance can also be agreed by means of an inheritance contract, as only a contractual commitment can ensure that the waiving party cannot assert their inheritance claim upon the death of the testator. Furthermore, the division of the estate can also be agreed by means of an inheritance contract with the determination of imputed values.

**Are inheritance contracts and last wills equivalent?**

Both an inheritance contract and a last will are testamentary dispositions. Both offer the testator the opportunity to freely dispose of their estate within the legal framework. Unlike a last will, however, an inheritance contract cannot be unilaterally revoked. Revocation requires the written consent of all contracting parties.

**What applies if there exists both an inheritance contract and a last will?**

If the inheritance contract and the last will both meet the formal requirements and legal framework conditions, both are valid. However, it should be noted that testamentary dispositions and inter vivos gifts, except the usual occasional gifts, can be contested if they violate the obligations arising from the inheritance contract, i.e. if they diminish the contractual inheritance benefits and have not been reserved in the inheritance contract. Testators who wish to draw up a last will in addition to an existing inheritance contract should therefore ensure that these dispositions do not contradict the provisions of the inheritance contract.

**Can I appoint UNICEF Switzerland and Liechtenstein as a beneficiary in my inheritance contract?**

Yes, the contracting parties can freely appoint UNICEF Switzerland and Liechtenstein as a beneficiary (appointed heir) in their inheritance contract. However, the compulsory portions of any heir with forced heirship rights must be preserved, as otherwise the inheritance contract may be challenged by means of an action for abatement to claim the compulsory portion.

### What is a compulsory portion?

The compulsory portion is the part of the statutory inheritance that the testator cannot take away from his or her descendants, spouse or registered partner. The compulsory portion can only be legally waived if the conditions for disinheritance are met, i.e. if the heirs have committed a serious crime against the testator or a person close to him or her or have seriously violated their obligations under family law. Under the revised inheritance law, descendants and the surviving spouse or registered partner each receive half of the statutory inheritance as a compulsory portion. Parents are no longer entitled to a compulsory portion. Below you will find an overview of the compulsory portion:

#### Compulsory portions and freely disposable share (with last will)

The deceased leaves behind only a spouse:  1/2 compulsory portion spouse 1/2 freely disposable share	The deceased leaves behind children:  1/2 compulsory portion children <sup>1</sup> 1/2 freely disposable share	The deceased leaves behind a spouse and parents:  3/8 compulsory portion spouse, parents do not have a compulsory portion 5/8 freely available share
The deceased leaves behind a spouse and siblings:  3/8 compulsory portion spouse Siblings do not have a compulsory portion 5/8 freely disposable share	The deceased leaves behind a spouse and children:  1/4 compulsory portion spouse 1/4 compulsory portion children <sup>1</sup> 1/2 freely disposable share	The deceased is single and leaves behind no children:  1/1 freely disposable share

<sup>1</sup> Children inherit in equal shares; predeceased children are replaced by the grandchildren or great-grandchildren, if applicable

### What is the difference between the statutory inheritance and the compulsory portion of the estate?

The statutory inheritance is the share of the entire estate that an heir receives by law if the testator has not left other instructions for the division of their estate in a last will or inheritance contract. The compulsory portion is a fraction of the statutory inheritance. The heirs with forced heirship rights are entitled to their compulsory portion even if the testator has made deviating arrangements in an inheritance contract or a last will.

### What is a last will?

In a last will and testament, the last wishes of the testator are recorded in writing and the testator can dispose of their estate as they see fit. Furthermore, a last will ensures clarity among the heirs and allows the estate to be distributed quickly. A last will can be amended at any time.

### Can I freely dispose of my estate in my last will?

Yes, provided that you do not violate the compulsory portions of heirs with forced heirship rights. You can only disinherit such heirs under exceptional circumstances, e.g. if they have committed a serious crime against you or a person close to you or have seriously violated their obligations under family law. If there

are no heirs with forced heirship rights, you can freely dispose of your entire estate.

**What requirements must be met in order for a last will to be legally valid?**

A last will can be written by hand or drawn up before a notary public (known as a public last will). A handwritten last will must be written by hand from beginning to end, contain the place and exact date, and be signed with your name. Later amendments must also be made by hand, dated and signed by you. A public last will is drawn up before a notary public and two independent witnesses. The testator's capacity of judgement will be confirmed in the public deed.

**As a single person, how can I prevent distant relatives or the government from inheriting my estate?**

Draw up a last will in which you can appoint people close to you or organizations such as UNICEF Switzerland and Liechtenstein as heirs or legatees.

**How can I leave my estate to my partner and still make a contribution to UNICEF Switzerland and Liechtenstein?**

By appointing UNICEF Switzerland and Liechtenstein as subsequent heir in your last will or by making a subsequent bequest to UNICEF. UNICEF therefore only becomes a beneficiary after the death of your partner. This can also be regulated by an inheritance contract between you and your partner. Alternatively, you can appoint UNICEF Switzerland and Liechtenstein as a legatee.

**What will my cohabiting partner inherit if I do not draw up a last will?**

Cohabiting partners are not legal heirs and are therefore not entitled to a statutory inheritance in the absence of a last will or an inheritance contract. In order to inherit, cohabiting partners must therefore be appointed as heirs by means of a last will or inheritance contract.

**How can I provide security for my cohabiting partner?**

Cohabitation partners pay the highest inheritance tax of all heirs. It may therefore be more advantageous to take out life insurance in favour of your cohabiting partner and leave the inheritance to him or her as a usufructuary. The insurance benefit that is paid out after the death of the deceased is not included in the estate and is therefore exempt from inheritance tax. Thanks to the life-long usufruct of the estate, your cohabiting partner receives the income from the assets and can, for example, live in an existing house for the rest of their life. The usufruct is generally taxed. Only after the death of the cohabiting partner will the estate be distributed among your appointed heirs (e.g. UNICEF Switzerland and Liechtenstein). However, if there are heirs with forced heirship rights, the usufruct may not affect their compulsory portion.