

# Estate Planning for Americans in Switzerland

Marital Property

Inheritance

Incapacity

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# Division of marital property



## 1. Division of the marital property

In case of divorce or death of a spouse



## 2. Division of the estate

Between the heirs (and the legatees)



## 3. Incapacity

Daily life, assets and medical decisions

# Division of Marital Property

## What will happen if no planning is done?

Which law will apply? Swiss or US Law?

Law of the (last) common place of residence of the spouses

→ Swiss law

How is property divided under the Swiss «default» regime?

Acquêts sharing (*Errungenschaftsbeteiligung, participation aux acquêts*)

- Assets earned during the marriage : split 50-50 «Acquêts»
  - Assets acquired before the marriage: not split
  - Gifts / bequests received during the marriage: not split
- } «Biens propres»

# Division of marital property

## What are your alternative planning options?

**By making a prenup / postnup, you can choose between:**

1. Modified acquests sharing: 50%-50% rule can be changed
2. Community property (freedom as to which assets are in or out of the community)
3. Separation of assets
4. US law if at least one spouse is US

# Inheritance

## What will happen if no planning is done?

- **Which law will apply? Swiss or US Law?**

Law of the last place of residence of the deceased

→ Swiss law

- **How is the estate divided under the Swiss law «ab intestat» rules ?**

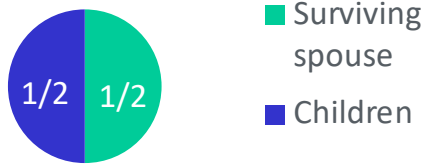
No will -> Legal shares

In any case, forced heirship rights (réserves héréditaires)

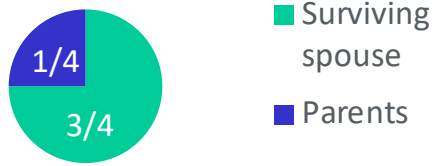
# Inheritance

## Legal shares of the heirs at law

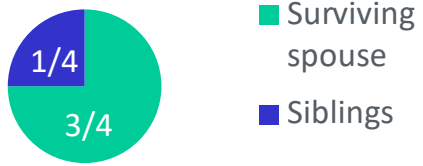
Surviving spouse and children



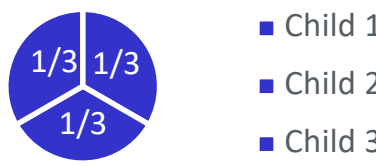
Surviving spouse and parents



Surviving spouse and siblings

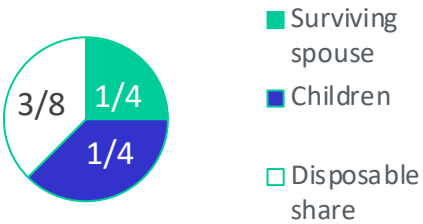


Three children

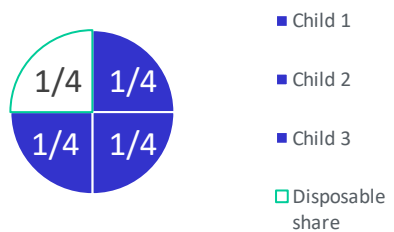


## Forced heirship rights

Surviving spouse and children



Three children



# Inheritance

## What are your alternative planning options?

By making a will or an inheritance agreement, you can choose to:

1. **Modify** the legal shares
  2. Appoint **new heirs**
  3. Appoint **legatees**
  4. Subject your estate to **US law**
  5. Make an **inheritance agreement**
  6. Give a **usufruct** to the surviving spouse
  7. Trusts ?
- But: forced heirship rights must be respected
- Options to « get around » the forced heirship rights

✓ Appointment of an **executor!**

# In case of incapacity... the new Swiss rules

## What will happen if no planning is done?

- **Who can act on my behalf in the daily life?**

- 1. Guardian**

is appointed by the Court if:

- Individual cannot safeguard his/her interests
- An urgent matter must be settled

- 2. Spouse or civil partner**

has limited powers with respect to:

- **Legal acts:** only if «usually necessary» to satisfy the needs
- **Assets:** limited to «ordinary» management
- **Mail :** only if «necessary»



# In case of incapacity... the new Swiss rules

## What will happen if no planning is done?

- **Who can make health-care decisions on my behalf?**

In order:

1. **Guardian** if he/she specifically received this power
  2. **Spouse or civil partner** if they live in the same household or if he/she provides personal assistance
  3. **Descendants**
  4. **Parents**
  5. **Siblings**
- } if they provide personal assistance

# In case of incapacity... the new Swiss rules

## What are your alternative planning options?

- **Daily life → Power of attorney in case of incapacity**
  - Freedom to appoint the attorney you want
  - Freedom to define the scope of their powers in 3 possible fields
    - Personal assistance
    - Management of the assets
    - Legal representation towards third parties
  - Possibility to appoint different attorneys in different fields
- **Health care → Advanced medical directives**
  - Advanced instructions for physicians
  - Appointment of a representative for health-care purposes

# Thank you very much for your attention

*If you have any questions...*

## **Bonnard Lawson – International Law Firm**

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