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General Aspects of Relationships
France / USA

US/FR Estate: A General Guide

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Importants notes

Nearly Half a Million People Will Be Affected by a French-American Cross-Border Inheritance.

Planning ahead for your estate is not just wise — it's essential.

This guide outlines some general principles to help you understand the key concepts of international estate planning between France and the United States.

While this guide is not intended to provide detailed, tailored legal advice, it serves as a helpful starting point to identify your needs and define a plan of action to be developed in consultation with a qualified attorney.

Please note: this guide should NOT be considered personalized legal advice.

For any questions or concerns specific to your personal situation, we strongly encourage you to consult with a legal professional who is experienced in cross-border estate matters.

The author of this comparative guide between French and U.S. law cannot be held liable for any use of the information contained herein.

Introduction

Approximately 200,000 Americans live in France, and 300,000 French nationals reside in the United States, highlighting the growing internationalization of estate matters. This situation can give rise to conflicts of law, making it essential to understand the key principles of Franco-American estate planning.



If the deceased was a foreign national or lived abroad, if the heirs reside outside the country, or if assets are located in another country, this brief general guide may be of interest to you.



Indeed, the implications of the presence of a foreign element are numerous and require identifying the applicable law governing the estate (Civil Law vs. Common Law), the competent jurisdiction for settling the estate, and the tax arrangements between France and the United States.

The sources of law differ significantly. In France, the French Civil Code (particularly Articles 720 and following) governs the rules applicable to succession. However, this must be nuanced in light of European regulations (notably Regulation 650/2012) and case law from the French Court of Cassation.

In the United States, there is no single federal code governing succession law. Instead, each state has its own legal framework, leading to a plurality of systems influenced by Common Law. As a result, the two legal systems frequently diverge in determining the law applicable to a given case.

Conflict of Laws

Under French Private International Law

Since the entry into force of European Regulation No. 650/2012, the law applicable to the entire estate is either the law of the deceased's habitual residence at the time of death, or if the deceased made a choice of law (*by will or succession agreement*), they may designate the law of their nationality (*at the time of the choice or at the time of death*) — a mechanism known as "*professio juris*" in matters of succession.

Under American Law

There is no unified federal rule: each U.S. state applies its own succession (probate) law.

As a general principle under Common Law:

- **Movable property** (such as financial assets, furniture, bank accounts) is governed by the law of the deceased's domicile at the time of death.
- **Immovable property** (real estate) is governed by the law of the place where the property is located.

There is no unified legal mechanism under U.S. law comparable to the European *professio juris* allowing individuals to choose the applicable law for their succession.

FOCUS: The Professio Juris in Succession Matters

A French national residing in the United States may designate French law as the law applicable to their estate through a will. This designation can:

- Preserve the forced heirship rights of their children,
- Avoid the application of a trust if it is deemed contrary to French public policy,
- Clarify the administration of the estate by a French notaire (civil law notary).

Caution: The *professio juris* is binding only on **European authorities. U.S. courts are not obligated** to recognize or enforce it.

1. Nevertheless, **forced heirship** is no longer systematically protected as part of international public policy (French Supreme Court, Civ., September 27, 2017, No. 16-13.151).

Reserved Portion vs. Freely Disposable Portion

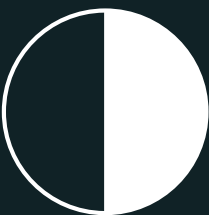


Reserved Portion refers to the portion of an estate that **must be** reserved by law for certain heirs, such as the spouse or children. The shares are defined by statutory rules.

Forced heirship stands in contrast to the **freely disposable portion** (*known in French as *quotité disponible**).



The freely disposable portion is the part of the estate that the deceased may distribute freely by will. Both the forced heirship share and the freely disposable portion vary depending on the number of **protected heirs** (heirs entitled to a reserved share).



In the presence of one child, the forced heirship portion is $\frac{1}{2}$, and the freely disposable portion is also $\frac{1}{2}$.



With two children, the forced heirship portion increases to $\frac{2}{3}$, which is shared equally between the children, leaving $\frac{1}{3}$ as the freely disposable portion.



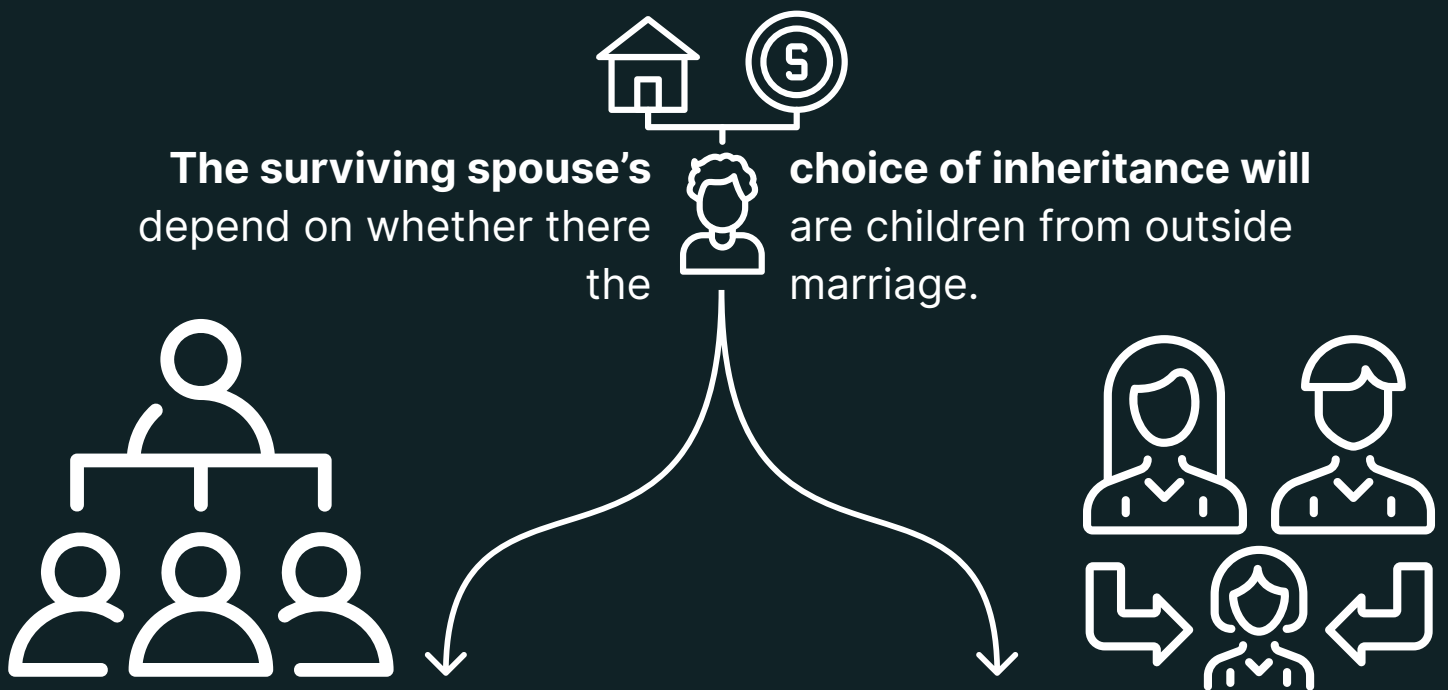
With three or more children, the forced heirship portion is $\frac{3}{4}$, shared equally among the children, and the freely disposable portion is reduced to $\frac{1}{4}$.

When the spouse still alive,

the estate **should be divided** through a split in ownership rights. It usually involves two parts:

1. **Usufruct (usufruit)** – the right to use the property and receive income from it (like living in it or collecting rent), but without owning it.

1. **Bare ownership (nue-propriété)** – the right to own the property, but without using it or earning income from it until the usufruct ends (usually when the usufruct holder dies).



If the couple only had children together, then the surviving spouse can choose between:

- receiving **1/4 of the estate in full ownership** (with the children receiving the remaining 3/4), or
- receiving **the entire estate in usufruct** (while the children receive the entire estate in bare ownership).

However, if either spouse had children from a previous relationship, then the surviving spouse **does not have a choice and must take 1/4 of the estate in full ownership.**

On top of that, we must not forget about the freely disposable portion of the estate and the reserved shares, **which still apply even when the spouse is alive.**

Applicable Procedures

Under U.S. Law

There is no unified federal jurisdiction; each state has authority over:

- **Probate** (the court-supervised process of estate administration),
- Based on **the decedent's domicile or the location of the assets.**

A trust may be used to allow for the distribution of assets without going through probate.

Regardless of the applicable law to the estate, French courts retain exclusive jurisdiction over:

- **Real estate located in France,**
- **Real rights proceedings** (such as sale, division, or co-ownership matters).

⚠ This applies **even if foreign law governs the estate** (e.g., California law).

U.S. court decisions **do not have automatic effect in France.** To be enforced, they require a recognition procedure (exequatur) in France, especially for matters like property division.

This exequatur will only be granted if the decision **complies with French international public policy.**

Under French Law

In most cases, the procedure is handled by a **notaire**, a public official with ministerial authority.

This is a **non-judicial process**, which is relatively fast due to the strict French rules governing inheritance distribution.



Estate Planning Tools in France

1. Gift While Alive (Donation)

You can give money, property, or other assets to your children or others during your lifetime. This can reduce the value of your estate, and there are tax benefits if you do it early enough. Gifts of **up to €100,000 are tax-free** for reserved heirs. These gifts can count toward their legally protected share of the inheritance if that's specified. You can make such gifts every fifteen years.

2. Life Insurance (Assurance Vie)

This is one of the most popular estate tools in France. You put money in an account, and when you die, the people you named (beneficiaries) get the money—often with little or no inheritance tax. It's a flexible and tax-friendly way to leave money to loved ones. Life insurance policies are generally **not included in the reserved portion** of the estate and can benefit anyone, not just legal heirs.

3. Joint Ownership with a Clause (Tontine Clause)

When two people buy a house together and include a tontine clause, the survivor becomes the full owner when one dies. This is really useful to protect the surviving partner, especially if you're not married.

4. Splitting Ownership (démembrement de propriété)

One of the most famous tools. Splitting ownership (called *démembrement de propriété*) is a way to lower taxes when passing on property. One person (usually the surviving spouse) keeps the right to use the property or collect rent from it — this is called usufruct. The other person (like a child) owns the rest. When the person using the property passes away, the full ownership automatically goes to the other person, with no extra taxes.

These tools can be combined depending on your family situation and what you want to achieve. It's always best to talk to a notaire (a French legal expert) for personal advice.



Basic Tax Overview



France and the United States have maintained strong legal and economic ties for many years. Yet, several cross-border estate planning issues remain unresolved.

One major area of difficulty involves trusts, which are not well recognized or understood under French tax law. Because of this, French authorities often reclassify trusts as either disguised gifts or fraudulent concealment of inheritance (recel successoral), leading to unexpected tax consequences.

Another point of divergence is French life insurance (assurance-vie). In France, these policies are excluded from the estate and benefit from favorable tax treatment. However, in the United States, life insurance proceeds are typically included in the taxable estate, since U.S. law taxes the deceased's total assets, not the individual shares passed on to heirs.

There are also ongoing challenges with valuation disagreements between the two tax systems and a real risk of double reporting, which can complicate compliance and increase the tax burden.

Two Different Tax Systems

In France, inheritance taxes are based on the relationship between the deceased and the heir.

There is a **progressive tax scale** depending on family ties — for example, spouses are fully exempt, and **each child benefits from a €100,000 exemption**.

Assets located in France are always taxable. Additionally, if the heir is a French tax resident, **all worldwide assets** they inherit are also subject to French taxation (though a foreign tax credit may apply).

In the United States, the estate tax applies to the **deceased's total estate**, not to what each heir receives. Unlike France, the **exemption threshold** is much higher — **about \$13.6 million in 2024**, adjusted annually. Any value above that is **taxed at progressive rates up to 40%**.

This tax applies to:

- U.S. citizens and residents, on their worldwide assets, and
- Non-residents, only on U.S.-based assets, with a very low exemption threshold of \$60,000.

The France–U.S. tax treaty (signed November 24, 1978) helps prevent double taxation. Under the treaty, the country where the asset is located taxes it first. The other country then grants a tax credit equal to the foreign taxes paid (up to the amount it would have charged itself).



About the Author Theo Secondi

Father, husband and French-qualified attorney, member of the Avignon Bar and several American legal associations, including the American Bar Association and the American Foreign Law Association.

Based in Provence, I help U.S. citizens, residents, and dual nationals navigate cross-border estate issues involving French and U.S. property, taxation, trusts, and life insurance.

Beyond legal representation, I am committed to empowering individuals and families by sharing accessible legal tools and comparative insights. My goal is to foster legal clarity and prevent unnecessary litigation between our two nations.

This guide is part of that broader mission.