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Dolores Stevanja

BLaw

Modern Family – Modern Inheritance Law

Dear Ladies and Gentlemen,

More self-determination over one's estate has been promised by the expected revision of inheritance law. In 1912, today's inheritance law came into force and even today, its content is largely based on the prevailing conditions of the time. Since then, it has only been selectively revised and is therefore no longer concurrent. With the coming revision, the law of succession must be adapted to the greatly changed realities of life and family dynamics and generally made more flexible. The social change that has taken place in recent decades should therefore also be recognisable at the legislative level.

Planned modernisation

At the centre of the revision is the reduction of mandatory provisions. The testators should be able to dispose more freely of their assets and obtain greater room for manoeuvre. New social forms of co-habiting have emerged and no longer correspond to the traditional family form. Patchwork families, factual partnerships with common children or single mothers and fathers are no longer a rarity. The revision of the inheritance law, for example, must allow life partners or stepchildren to be more favoured.

Current law

Many individuals settle their estate in a will or inheritance contract to favour those close to them. If you do nothing, then legal succession occurs, and one has no complete freedom over what happens to any assets after death. The law requires that certain persons receive a minimum share of the inheritance, the so-called compulsory portion. Entitlements for spouses or registered partners as well as parents of the testator have the right to these mandatory parts, which are stipulated by law. These mandatory parts are defined in quotas. Covered by law are neither cohabiting partners, stepchildren nor friends. The estate, less all compulsory shares, gives the free quota, which the testator can dispose of at will.

Implementation

In the future, it should be possible to determine (though with restrictions) who receives what share of the assets left behind. The Federal Council proposes the reduction of the compulsory portions for the descendants from three-quarters to one-half and the compulsory portion for a spouse from one-half to one-quarter of the legal succession. The mandatory succession rights of parents should be dropped altogether.

New regulation

The Federal Council is now proposing a so-called "support claim" for de facto partners who are in financial distress after the death of their partner. The hardship regulation is intended to protect the de facto life partner of a deceased person from poverty. But this new instrument of entitlement to support should be the exception, and act only as long as necessary to prevent poverty.

What's next?

The revision of inheritance law has been divided into stages. In a first stage, in August 2018, Embassy I was passed by the Federal Council to the Parliament. At the centre of the first stage was the reduction of the mandatory parts.

Before 2021, however, the enactment of such changes is not envisioned.

If we can also advise you on questions of inheritance law and estate planning, then the artax team is at your disposal.

Kind regards

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