

New Civil Code of Puerto Rico: Successions and Wills

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This is the last Alert of the series covering the complete overhaul of the Puerto Rico Civil Code ("New Code"), which **becomes effective November 28, 2020**.

On this Alert, we address the most relevant changes between the Previous Code and the New Code regarding **Successions and Wills**, which are codified in the Sixth Book of the New Code.

These changes are as follows:

Successions in General

- Order of Succession
 - The New Code preserves the Previous Code's orders of succession in an intestate estate, which provide that, absent a will, the first order to inherit belongs to the offspring and descendants. However, the New Code adds the surviving spouse to the first order of succession as a forced heir (Art. 1720). For example, if a testator has three offspring and a surviving spouse, each will inherit 25% of the estate.
- Widow/Widower's Usufruct
 - Because the surviving spouse was included as an heir in the first order of succession in an intestate estate, the widow's or widower's usufruct (found in Articles 761-766 of the Previous Code) was not included in the New Code.
- Heirs' Liability for Estate Debts
 - Under the Previous Code, once an heir accepted an inheritance, he or she became liable for all the debts of the estate even if they exceeded the assets inherited. Under the New Code, an heir is not personally liable for the debts and obligations of the estate unless he or she uses estate assets to pay estate debts not yet due. (Arts. 1587 -1588)
- Surviving Spouse's Use of the Family Residence

- A surviving spouse may stay in the family residence for life and, if the share of the community property plus any portion of the estate corresponding to the surviving spouse are not enough to pay for the value of the residence, the difference must be borne by the estate. (Art. 1625)

Wills

- Closed Wills Eliminated
 - The New Code provides for only two types of wills: open wills (in deed form before a notary public) and holographic or handwritten wills. Closed wills allowed under the Previous Code whereby the testator delivered the will to the notary public under seal are now eliminated (Art. 1643)
- Forced Heirs' Portion of the Estate
 - Under the New Code, the portion of the estate reserved for forced heirs in a will is reduced from two-thirds (as set forth in the Previous Code) to one half of the estate. (Art. 1621)
- Free Disposal Portion of the Estate
 - Under the New Code, the portion of free disposal in a will is increased from one-third (under the Previous Code) to one-half of the estate. (Art. 1623)
- No Witnesses Required
 - Under the Previous Code, the execution of a deed of last will required the appearance of at least three (3) witnesses. Under the New Code, witnesses are no longer required in the execution of a deed of last will, unless they are requested by the testator or the Notary. (Art. 1644)
- Other Formalities
 - The New Code provides that all other formalities for the execution of Open Wills are governed by the Notarial Act, not by the New Code (Art. 1645). For example, it is unclear whether the requirement that the notary read the will aloud to the testator before execution will remain, although it is very likely that ODIN (Office of Inspection of Notaries) will have to issue guidance for formalities of Open Wills under the New Code.
- Right of Representation
 - The right of representation is now recognized both in intestate and in testate estates pursuant to Article 1611 of the New Code. Pursuant to the

New Code, the descendants of an heir who repudiates an inheritance can claim the inheritance for them. (Arts. 1612 – 1615)

- Legal Entity as Part of the Estate
 - The New Code allows the decedent to create or order a third party to create a legal entity to carry out particular tasks of the estate. Under the Previous Code, the possibility of creating a legal entity to be part of the estate was not addressed, except for a testamentary trust. (Art. 1555)
- Estate Administrator
 - Under the New Code, the testator may appoint an administrator of the estate, who may be someone other than the executor, and who will take care of the estate until each heir and/or the legatees accept their inheritance. (Arts. 1563, 1564 and 1567)
- Indivision of the Estate
 - The New Code allows the testator to prohibit distributions of the estate for a period of up to 4 years. The heirs may also do so by agreement of all the heirs also for a period of up to 4 years, which can be extended by new agreements with the same time limitation, or where required by law. The Previous Code invalidated any provision included by a testator in the will which required the estate to remain undivided. However, when the testator provides for the indivision of the estate, the court may authorize a total or partial division of the estate before the expiration of the term if one heir requests it and shows either valid or obvious utility reasons. (Arts. 1606 – 1608)
- Arbitration
 - The New Code allows the testator to require the heirs and legatees to solve any conflict over the free disposal portion of the estate through arbitration. (Art. 1688)
- Automatic Revocation of Provisions
 - Under the New Code, any provision in favor of a spouse will be automatically revoked if the marriage has been annulled or if they are divorced when the testator dies. (Art. 1714)
- Last Wills under the Previous Code

- The New Code provides that the last wills of a decedent executed *before* the effective date of the New Code but who passes away *after* the effective date of the New Code will be *honored, but modified* to comply with the new provisions of forced heir and free disposal provisions of the New Code (Art. 1816). For example, if the will left two-thirds of the estate to the forced heirs, it will be reduced to one-half and include the surviving spouse as a forced heir. To avoid modifications that may be contrary to a decedent's wishes on how his/her estate should be divided, it is advisable to review last wills executed before the effective date to provide for alternative scenarios. Otherwise, the modification, absent agreement by all heirs, will be decided by a court.

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