

# WHAT RESPONSIBILITIES DOES A REPRESENTATIVE OF THE COMMUNITY OF HEIRS HAVE?

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The time between when a testator dies and when there is a definite distribution of the inheritance may amount to several years, especially when there are disputes between the heirs. If during this time the heirs cannot agree on the necessary administrative procedures regarding the inheritance, and no executor has been appointed in advance, a representative of the community of heirs is often appointed by the competent authority at the request of an heir.

What responsibilities belong to a representative of the community of heirs? In the following Q&A section, we will present the foundations of heir representation, along with what the representative may and may not do.

## A. How does a community of heirs arise?

By law, all heirs acquire the inheritance as a whole upon the death of the testator. The inheritance has the effect of creating a community of all rights and obligations until the division of the estate. In doing so, all claims and rights, ownership, possession and the restricted material rights of the testator in principle pass to the heirs. The same is true with regard to the liabilities of the testator.

The heirs become joint owners of all inheritance objects. They have the rights to the inheritance only jointly, subject to contractual or legal representation and administrative powers.

## B. What is the purpose of a community of heirs?

The purpose of the community of heirs lies within its own dissolution, resulting in the division of the estate.

It is not always easy to liquidate a community of heirs, especially if the heirs do not agree. For this reason, it is often the case that a community of heirs will remain in place for several years.

## C. Is a community of heirs subject to tax?

No, communities of heirs are basically not themselves subject to tax. Income and assets of a community of heirs are attributed directly to the single heir to the extent of their inheritance portion.

Because the community of heirs is not subject to tax, every heir has to pay tax in his or her own tax declaration from the date of death of the testator for his or her taxable share of income and property of the heirs, even if the inheritance is still undivided and the individual heir has not yet

received any assets.

The proportionate movable estate (e.g. bank or postal account, securities, jewelry, furniture) must be taxed to each heir at his or her place of residence. The proportionate immovable estate (land), on the other hand, is to be taxed where it is located.



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#### **D. Who represents the community of heirs?**

Communities of heirs have no body which could represent them. As so-called communities of joint owners, joint and unanimous action is required between the heirs for all administrative, disposal and representation activities.

The advantage of the principle of total ownership is that the rights of each individual member are comprehensively preserved - the community of heirs does not change without the cooperation of each individual heir.

What happens then when the heirs are unable to agree? Resolutions cannot be taken forward and there is a risk that the community of heirs will not be able to act. The law therefore provides that in such cases a body is appointed by the competent authority at the request of the co-heirs, which can represent the community of heirs outwardly and restore the ability of the heirs to act. This body is the representative of the community of heirs.

#### **E. Under what conditions can a representative of the community of heirs be appointed?**

According to the jurisprudence of the Federal Supreme Court, the authority that decides on the



appointment of a representative of the community of heirs has wide discretion.

Important reasons must be provided for the appointment of a representative of the community of heirs. These important reasons exist in particular,

- if the heirs or an individual heir is absent or incapable of managing the administration;
- if there are disagreements among them about a measure to be taken, so that a unanimous decision on the management of the inheritance is not possible;
- if it is necessary to protect the community from the actions of a single heir.

#### **F. Who can be appointed as a representative of the community of heirs?**

Any natural or legal person who is capable of acting can be appointed as a representative of the community of heirs. A representative of the community of heirs may not, however, act in a conflict of interest. For this reason, joint heirs can only be appointed as a representative of the community of heirs when the consent of all co-heirs is given.

In the appointment of the representative of the community of heirs, the competent authority shall take into account the scope and importance of the future tasks.

Both the person making the request to appoint a representative of the community of heirs as well as the co-heirs may submit proposals to the authority as to who should be appointed as representative of the community of heirs. However, the competent authority is not bound by these proposals.

#### **G. Does the representative of the community of heirs act in person?**

Yes, the representative of the community of heirs is, in principle, obliged to fulfill his or her duties personally. However, the assistance of a support person is permitted.

#### **H. For whose interests does the representative of the community of heirs advocate?**

The representative of the community of heirs acts independently of the will or the interests of individual or the majority of the heirs. In doing so, the representative of the community of heirs must protect the interests of the heirs as a whole, rather than the individual or a majority of the heirs.

The representative of the community of heirs may not interfere with internal conflicts among the joint heirs. However, the representative of the community of heirs is obliged to assert claims of the estate against individual co-heirs.

#### **I. What kind of representative of the community of heirs are there?**

There are two types of representatives of the community of heirs: the special and the general representative of the community of heirs.

The special representative of the community of heirs is appointed for certain individual actions, upon which the heirs cannot agree, (for example, the sale of an estate asset or the management of a particular process).

The general representative of the community of heirs is entrusted with the management of the whole inheritance.

Both the special and general representative of the community of heirs is, within the scope of his mandate, a legal representative of the community of heirs, and as such can without their consent or retroactive approval undertake authorizations and obligations on behalf of the community of heirs. For this reason, the appointment of a representative of the community of heirs to the inheritance in the area of activity transferred to him shall exclude the heirs' own actions.

#### **J. What are the duties and powers of a general representative of the community of heirs?**

The precise scope of the duties and powers of the general representative of the community of heirs arise primarily from the order of the competent authority.

The duties of a general representative of the community of heirs usually consist of the administration of the entire inheritance, in particular:

- the provision of current business,
- the maintenance and careful increase of the estate,
- the payment of inheritance debt,
- the organization of the bequests and preparation of the distribution of the estate, but not its implementation,
- the settlement of tax matters of the inheritance,
- raising claims of the inheritance against individual heirs.



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**K. Is the general representative of the community of heirs authorized to dispose of objects of the estate?**

Yes, the general representative of the community of heirs is authorized to do so, but only within the scope of his duties. The disposal of objects of the estate is imposed, particularly when debts need to be paid or there is a risk of a reduction in the value of an object of the estate.

**L. Is the representative of the community of heirs authorized to carry out capital-enhancing investments with objects of the estate?**

The representative of the community of heirs is obliged to preserve the estate assets in their original stock and to manage them according to the rules of sound economics.

On the other hand, the representative of the community of heirs is not authorized to alter the estate assets from their original stock and quality, for example by using cash from the estate or by making value-enhancing investments. Such an approach would also be problematic from a tax perspective. A community of heirs constitutes a transitional organization existing for the period of time of the inheritance process from a real estate gains tax perspective. It is of a temporary nature and has the sole purpose of securing, preserving and appropriately managing the estate until its dissolution. If this purpose is no longer pursued, but another instead, the heirs form from a tax perspective an ordinary partnership and conclude the distribution of the inheritance for the purpose of real estate gains tax. The consequence of this is that the later dissolution of the community of heirs by the heirs of the real estate gains tax is no longer to be classified as a tax-suspending division, but rather as a taxable property transfer which triggers the real estate gains tax. Already the inclusion of a mortgage for a renovation is seen as an objective criterion for a harmful change of purpose insofar as the conversion of a property does not serve the mere elimination of defects, which already existed at the time of the inheritance.

**M. Does the representative of the community of heirs have to make an inventory?**

Yes, the representative of the community of heirs is obliged to record at the beginning of his or her activity a complete inventory comprising all the assets and liabilities of the estate. Exempted from this obligation is the special representative of the community of heirs, who has been appointed only for certain individual actions.

**N. Is the representative of the community of heirs obliged to give an account of his activity?**

Yes, the representative of the community of heirs has a duty to provide an account of his or her activities. This includes an obligation to provide informational and reporting accountability.

**O. What happens if the representative of the community of heirs fails to fulfill their tasks?**

The representative of the community of heirs is responsible for his or her actions in a variety of ways. In particular, the representative of the community of heirs may be liable to pay the heirs

damages for negligent acts. In addition, a representative of the community of heirs may be held responsible from a criminal or disciplinary point of view.

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