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RELEVANT
BUSINESS MATTERS

SIMPLIFIED TRANSFERS OF DONATED ASSETS

EDITED BY

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Dear Clients,

The so-called 'Simplification Decree' (Law No. 182 of 2 December 2025) has reduced the protection granted to so-called 'overlooked or aggrieved statutory heirs', that is, the share of the estate reserved by law for the deceased's closest relatives (spouse, ascendants and children, pursuant to Articles 536 et seq. of the Civil Code), in order to facilitate the marketability of assets derived from gifts by eliminating the risks to their purchasers that were present under the previous legislation.

Obstacles prior to the reform and the action for reduction

It is worth noting that statutory heirs are entitled to bring what is known as **an 'action for reduction'**, which allows them to have testamentary dispositions and gifts that exceed the share over which the deceased was entitled to dispose declared invalid (Articles 554 et seq. of the Civil Code). Once the reduction has been obtained, the heir entitled to a compulsory share may bring an action for the return of the asset; prior to the reform, they could do so not only against the beneficiary of the unlawful disposition but, in the case of gifts, also against any subsequent **purchasers** (Article 563 of the Civil Code) and against other third parties who had created **encumbrances or mortgages** on the asset (the 'purgative' effect: Article 561 of the Civil Code, which extends this effect to legacies as well). These latter provisions hindered the trading of donated assets, both during banks' due diligence for granting mortgages and on the part of purchasers, who often demanded costly insurance policies to protect themselves against the risk of legal action by the heir.

Purchases for valuable consideration remain unaffected; those made free of charge are liable only for the benefit received

The new provision (Article 44 of Law 182/2025) first of all abolishes the action for restitution against third parties who have acquired rights from the donee, by amending Article 563 of the Civil Code: in the event of the disposal of the asset, the protection afforded to a statutory heir who has successfully brought an action for reduction is no longer in rem but merely obligatory and at the expense of the donee, who is required to pay the value of the omitted share in cash. If the donee is wholly or partly insolvent, the assignee is required to **compensate the statutory heirs in cash only if they acquired the property free of charge** and within the limits of the benefit they derived from it. Therefore, a purchaser for valuable consideration can never be held liable in any way, and this is the legislative change that most effectively resolves the problem of the re-sale of property acquired by way of a gift.

Encumbrances and mortgages also remain unaffected; only the donee pays

Secondly, encumbrances and mortgages registered by the donee remain valid, even if the asset (immovable or movable) is returned to the heir entitled to a statutory share following an action for reduction and restitution; in this case, the donee is required to compensate the legitimate heir in cash for the reduced value of the asset due to the encumbrance (Article 561 of the Civil Code has been amended to this effect).

Time limit for encumbrances and mortgages on legacies reduced

The discharge of encumbrances and mortgages is confirmed in the case of assets returned to the statutory heir which had been (not donated but) bequeathed ("legacy": a specific testamentary disposition); however, the period beyond which this effect is excluded – and therefore the registered encumbrances become unaffected – has been reduced from ten to three years. In particular, if the court application for reduction is registered after three years of the opening of the succession, the reduction no longer affects encumbrances registered prior to that application (Article 2652(8) of the Italian Civil Code).

Our firm remains at your disposal for any further clarification and for the analysis of specific cases.

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