

Turkish Law of Inheritance Series III.:

The Concept of Statutory Entitlement, Intervention to Statutory Entitlement, and Its Legal Consequences

Authors: Atty. M. Tarık Gülerüz // Aziz Can Cengiz

The legator has the authority to freely dispose of their assets in their lifetime. However, Turkish Civil Code secures the inheritance rights of some heirs and protects the inheritance shares at certain rates. Heirs whose inheritance rights are protected are defined as “heirs with statutory entitlement” in the Turkish Civil Code.

In this part of the Inheritance Law Series, the concept of statutory entitlement and the rights of heirs subject to statutory entitlement are examined.

I. What Does Statutory Entitlement Mean?

If the deceased has not made a valid and effective testamentary disposition on a portion or all of their assets, statutory heirs are superfiary.

Nonetheless, one of the most important and frequently asked questions regarding inheritance law is to what extent the legator can deprive these statutory heirs of their shares with a testamentary disposition. The concept of "statutory entitlement" draws the limit of the legator's disposition ability on inheritance shares of future heirs through a will or an inheritance contract.

II. Which Heirs Have Statutory Entitlement?

In accordance with the Turkish Civil Code, statutory entitlement is provided only for the surviving spouse, issues and finally the parents of the deceased. In other words, only these individuals have statutory entitlement. For example, the legator's siblings have no statutory entitlement.

III. Statutory Entitlement Ratio

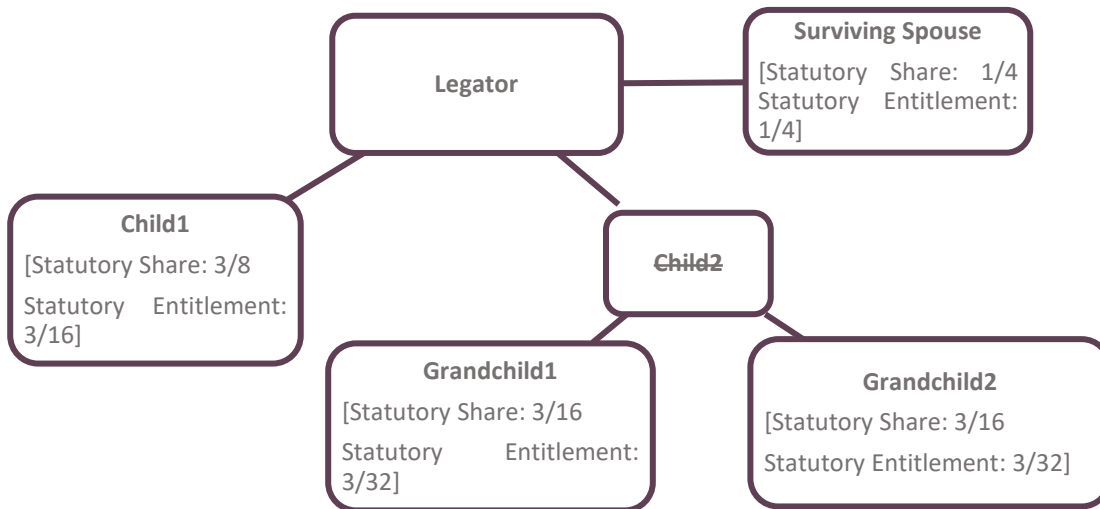
Statutory entitlement is one-half of the statutory shares for any issue, and one-quarter of their statutory share for each parent. If the surviving spouse is an heir along with an issue or a parent of the legator, statutory entitlement is the entirety of their share.

IV. Is It Possible for the Legator to Make Dispositions on the Remainder of the Estate Apart from the Statutory Entitlement?

The legator may freely dispose of half of the statutory shares of any issue and three-quarters of the statutory shares of each of the parents. In cases where the surviving spouse is co-heir with any issue or the parents of the deceased, the spouse's statutory entitlement is the entirety of the statutory share. Therefore, it is impossible to deprive the spouse of the statutory share. On the other hand, if the surviving spouse is co-heir with the third class or by themselves, one-fourth of the spouse's statutory share may be disposed of.

As an example, assume Child1 and spouse are alive upon the legator's death, and Child2 has passed away earlier leaving two children behind. In this case, if the legator has made no testamentary disposition, the surviving spouse will receive one-quarter [1/4] of the estate while the, Child1 will receive three-eighths [3/8], and each of the grandchildren will receive three-sixteenths [3/16].

If the legator makes a testamentary disposition, they will be able to dispose three-eighths [3/8] of their assets in total, without interfering with the statutory entitlement. This is because all of their statutory heirs have statutory entitlement, and the total of their statutory entitlement is five-eighths [5/8].



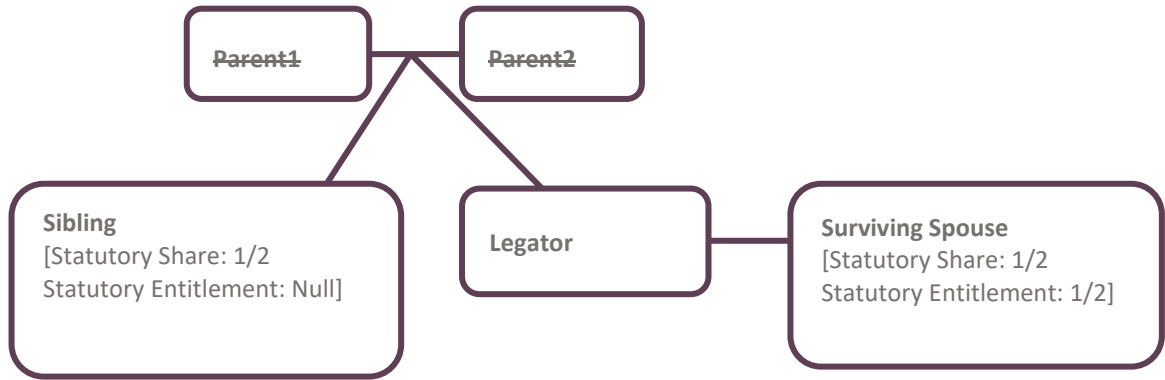
V. Do The Siblings of the Legator Have Reserved Portion?

No. Previously, the siblings' statutory entitlement was determined as [1/8] of their statutory share. However, with the amendment made in the Civil Code in 2007, there is no longer any statutory entitlement of siblings in Turkish law.

VI. How is the Statutory Entitlement of the Surviving Spouse Calculated?

The statutory entitlement of the surviving spouse varies according to the class they inherit with. Specifically, if the spouse is co-heir with the children and grandchildren of the legator [the first-class heirs], the statutory entitlement is the entirety of their statutory share, which is one quarter [1/4] of the estate. In the event that the spouse is co-heir with the parents of the deceased and their descendants [the second-class heirs], statutory entitlement of the spouse is once again the entirety of their statutory share, which is 1/2 of the estate in this case. Finally, if the spouse is co-heir with third class heirs such as deceased's grandfather, uncle, aunt, cousin or cousin, three-quarters [3/4] of spouse's statutory share is statutory entitlement.

Above, the statutory entitlement of the surviving spouse in cases where they co-inherit with the first class, was examined. Assuming that the legator had no children and the parents passed away before them, the surviving spouse and siblings of the deceased will be the heirs. Since the sibling belongs to the second class, the spouse will be co-inheriting along with the second class and the statutory entitlement of surviving spouse will be half of the estate, same as their statutory share. As stated above, with regard to siblings, there is no statutory entitlement. However, unless a testamentary disposition was made, the sibling receives their statutory share as an heir.



VII. Deprivation of the Statutory Entitlement

Yes, deprivation of the statutory entitlement may be in question in cases of disqualification to inherit and disinheritance, as well as through an onerous or gratuitous waiver agreement made before the legator's death.

On the other hand, dispositions of the legator that interfere with statutory entitlements are not automatically null. If the legator makes a disposition that will partially or completely deprive the heir of the statutory entitlement and the heir does not file a lawsuit for the annulment of this disposition or action in abatement, the disposition of the legator will remain valid.

VIII. How Can an Heir with Statutory Entitlement Claim Their Rights in Case of an Interference by the Legator?

First, it should be noted that the existence of heirs with statutory entitlement does not abolish the legator's ability to dispose, but only limits it. The disposition of the legator that infringes on the statutory entitlement are not automatically null and can only be subject to abatement if the heir with the statutory entitlement requests. In other words, parts of the dispositions interfering with the statutory entitlement can be requested to be returned.

Abatement is demanded through a lawsuit, and as a result of the lawsuit, the disposition of the legator is not completely invalidated, but only the parts interfering with the statutory entitlement. Action in abatement and other possible lawsuits regarding inheritance will be explained in detail in our subsequent articles.

For further information please contact:



Dr. Zahide Altunbaş Sancak

z.sancak@guleryuz.av.tr



M. Tarık Gülerüz

t.guleryuz@guleryuz.av.tr

Bu içerik yalnızca bilgi verme amaçlı olup hiçbir surette hukuki tavsiye niteliği taşımamaktadır. Fikri mülkiyet hakları Gülerüz & Partners Avukatlık Bürosu'na ait olan bu içeriğin yazılı izin alınmaksızın çoğaltılması, kopyalanması ve kullanılması yasaktır.

This content is solely produced for informative reasons and do not constitute legal opinion or advice under any circumstances. Gülerüz & Partners Attorneys at Law is the sole owner of the intellectual property rights of this content and shall not be reproduced, copied, or used without written consent of Gülerüz & Partners Attorneys at Law.