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Succession planning: paths to continuity and legal security

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Adriana Moutinho Magalhães Iannuzzi
Lawyer, OAB 8065/AM.
Master in Public Security and Human Rights
Higher Education Professor at Santa Teresa College
Address: Manaus – Amazonas – Brazil
Email: advadrianammi@gmail.com

David Cardoso dos Santos
Law student
Institution: Santa Teresa College (FST)
Address: Manaus – Amazonas – Brazil
ORCID: https://orcid.org/0009-0002-2536-2633
Email: davidcardosobr@hotmail.com

Hellen Rubens de Souza
Law student
Institution: Santa Teresa College (FST)
Address: Manaus – Amazonas – Brazil
Email: davidcardosobr@hotmail.com

SUMMARY

This article examines succession planning as a legal instrument for organizing estates and preserving legal security in inheritance transfers. The research is based on the premise that succession, in addition to being an inevitable legal phenomenon, involves emotional, economic, and social aspects that directly impact the stability of family relationships. In this context, succession planning emerges as a rationalization mechanism, allowing the owner of the estate to define, in advance and within legal limits, the destination of their assets, reconciling private autonomy with the protection of the legitimate inheritance of necessary heirs. The analysis covers the legal foundations of the institution, the constitutional principles that guide it, and the main applicable legal instruments, such as wills, donations, family holdings, prenuptial agreements, life insurance, and private pension plans, based on specialized doctrine and the case law of the Superior Court of Justice. It demonstrates that succession planning transcends the merely patrimonial aspect, constituting a true strategy for family management and conflict prevention, while simultaneously preserving business continuity and ensuring financial liquidity for the succession. Thus, the institute reaffirms its practical and social importance as an expression of responsibility, prudence and predictability in patrimonial legal relations.

KEYWORDS: Succession planning; Inheritance; Family Heritage; Legal security; Succession Law;

ABSTRACT

This article aims to examine estate planning as a legal instrument for patrimonial organization and the preservation of legal certainty in *causa mortis* transfers. The study is based on the premise that succession, beyond being an inevitable legal phenomenon, encompasses emotional, economic, and social aspects that directly affect the stability of family relationships. In this context, estate planning emerges as a rationalizing mechanism that enables the owner of the assets to determine, in advance and within legal limits, the destiny of their property, reconciling private autonomy with the protection

of the heirs' legitimate portion. The analysis addresses the legal foundations of the institute, the constitutional principles that guide it, and the main applicable legal instruments — such as wills, donations, family holdings, prenuptial agreements, life insurance, and private pension plans — based on specialized doctrine and precedents from the Superior Court of Justice. The study demonstrates that estate planning transcends a merely patrimonial dimension, representing a true strategy of family management and conflict prevention, while ensuring business continuity and financial liquidity for succession. Therefore, the institute reaffirms its practical and social importance as an expression of responsibility, prudence, and predictability in patrimonial legal relations.

Keywords: Estate planning; Inheritance; Family assets; Legal certainty; Law of Succession.

1. INTRODUCTION

Human existence, by its very nature, is not perpetual, although it may extend abundantly to some and, to others, more rapidly, in resulting from the designs of time or the contingencies of chance. Imperiously, in certain stage, physical life is exhausted, leaving the heirs and those who are ours affectively close not only the material heritage, but also the inheritance intangible that makes up each individual's legacy.

The treatment of succession during life, however, has historically been covered by intense negative cultural charge, often being seen as a taboo or bad omen, which contributes to its constant postponement, as if it were possible to extend indefinitely an irremediable reality. However, it is the right of every individual organize and plan the purpose of your assets, both during your life and beyond her, after her death. In this context, succession planning involves not only as a faculty, but also, in many circumstances, as a true necessity, to the extent permitted, within the limits established by the legal system Brazilian, especially through inheritance legislation, to provide for and organize the destination of your assets in order to ensure greater security and harmony in legal relationships and family members.

In the context of Civil Law, succession represents the legal mechanism that ensures the continuity of patrimonial relations, whether by act between living persons *(inter vivos),* either by reason of death *(causa mortis).* This is the transfer of rights and obligations from one subject to another, ensuring the stability of legal relations and the circulation of assets in the legal system. As highlighted by Zanini (2024), succession translates into replacement of one person by another in the ownership of a certain legal relationship,

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covering both situations such as the transfer of property and the sum of possessions in adverse possession. In the specific field of Succession Law, this transmission is becomes concrete with the death of the holder — the *deceased* —, at which point the succession and inheritance, understood as the universality of rights and duties assets, is automatically transferred to the heirs, according to the principle of *saisine* (art. 1,784 of CC/2002).

2. SUCCESSION PLANNING: CONCEPTUAL ASPECTS

Succession planning consists of a set of legal strategies aimed at the early organization of the transfer of assets, allowing the owner of the estate structure the succession in a safe, efficient manner and according to your wishes. This institute is not restricted to the mere reduction of taxes, but has an eminently legal and social, seeking to guarantee the continuity of patrimonial relations, preservation of family assets and prevention of conflicts between heirs. Maria Helena Diniz (2019) observes that succession planning encompasses instruments legal instruments that enable the anticipation of succession, providing predictability and security to relationships between successors and heirs.

The central objective of succession planning is to ensure that the transmission of the assets is carried out in an orderly manner, avoiding legal disputes and promoting family harmony, without prejudice to the observance of the legally protected rights of necessary heirs. Caio Mário da Silva Pereira (2021) emphasizes that planning must be understood as a wealth management tool, capable of articulating the will of the holder with the applicable legal discipline, guaranteeing protection of assets and security legal to the successors.

From this perspective, the Brazilian legal system offers several legal and extrajudicial instruments, among which the following stand out: the use of wills, which allow the inheritance to be disposed of while respecting the legitimate rights of the heirs necessary; donation with reservation of usufruct, enabling the transfer of assets in life without loss of control; family corporate structures, such as holding companies, which centralize asset management; and insurance or asset funds, which guarantee liquidity for paying taxes and maintaining family assets. Carlos Roberto Gonçalves (2024) notes that the use of equity companies and holding companies family is especially relevant for business families, as it allows

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preservation of assets and continuity of business management, integrating succession planning and corporate planning.

Silvio de Salvo Venosa (2023) complements this conception by emphasizing that the anticipation of succession must preserve the continuity of legal relations, avoiding the vacancy of assets and ensuring that the effects of the transfer are produced in a in an orderly, safe and predictable manner. The coordinated application of these instruments allows that the succession occurs with transparency and legal compliance, preventing future disputes and ensuring that the holder's wishes are respected, even if the assets are complex or involving family businesses of economic relevance. Orlando Gomes (2019) adds that the function of planning is not restricted to protection individual assets, but also includes maintaining family security and harmony, ensuring the effectiveness of inheritance and preventing disputes *(Civil Law Institutions).*

In the Brazilian legal context, succession planning must observe the rules of the Civil Code of 2002, especially with regard to the legitimate share of heirs, the validity of wills and donations, and the regulation of legal succession (arts. 1,784 to 2,027). The legislation ensures that the combination of voluntary instruments and legal rules ensure an orderly succession, protecting the rights of necessary heirs and providing legal security to patrimonial acts carried out during life. Thus, the succession planning emerges as an instrument for managing and protecting assets, reconciling the individual interests of the holder with the requirements of the legal system legal, promoting predictability, asset continuity and stability of family relationships.

In short, succession planning is not limited to the mere anticipation of asset transfer or tax purposes, but should be understood as strategic element of asset management, ensuring the effectiveness of inheritance rights, the preservation of family harmony and legal security. To to fully achieve such objectives, specialized legal advice is recommended, capable of integrating the peculiarities of the heritage, family needs and current regulatory complexity, ensuring that the succession occurs efficiently, organized and legally secure.

3. SUCCESSION IN BRAZILIAN LAW

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In the field of Civil Law, succession is presented in two forms: **inter living** and **causa mortis.** It is, in general terms, the transmission of rights of a subject to another, either by expression of will or due to the death of the holder. As Zanini (2024, p. 6) observes, *"The legal notion of succession designates, generically, any replacement of one person by another in the ownership of certain legal relationship".* Thus, when the alienation of a real estate property occurs, the the acquirer succeeds the transferor in ownership of the property right. Likewise, in the possessory sphere, it is possible to add the possessions of the current holder with those of his predecessors, in order to make usucaption viable, as highlighted by Maria Helena Diniz (2019) when dealing with the theory of possessory succession. In this scenario, the institute of succession proves to be an indispensable mechanism to guarantee the continuity of legal relations, ensuring the circulation of goods and the stability of situations in the legal system.

Succession Law is primarily dedicated to succession **by reason of death,** that begins with the occurrence of a future and inevitable event, although uncertain in relation to the exact moment in which it will occur: death. In this scenario, inheritance is the object central to the succession institute and the heirs as subjects of transmission. The inheritance, as Maria Helena Diniz (2019) teaches, *"constitutes the universality of law composed of the set of active and passive patrimonial legal relationships that are transmits to successors".*

According to Giselda Hironaka (apud Tartuce, 2024), the foundation of Law Succession goes beyond the simple preservation of family assets or continuity of the property. The author understands that the transmission *causa mortis* plays a role of protection and perpetuation of the family, acting as an element of cohesion and stability social.

From this perspective, Tartuce (2024) adds that Law Succession is not only based on property rights and their social function — principles provided for in Article 5, items XXII and XXIII, of the Federal Constitution —, but also in the centrality of the dignity of the human person, both in its dimension both individual and collective (arts. 1, III, and 3, I, of the CF/1988).

Under the Civil Code, art. 80, II, classifies inheritance as property real estate, even if all the assets that make up the inheritance estate are movable. However, art. 1,791 expressly provides that the inheritance is indivisible until it is shared, characterizing it as a patrimonial unit. Thus, it can be stated that inheritance is, simultaneously, immovable and indivisible property.

It should also be noted that the inheritance corresponds only to the part transferability of assets, since certain rights are extinguished upon death of the holder, such as, for example, the right to alimony that he may be owed. Zanini (2024) highlights that inheritance or hereditary law organizes the transmission of the deceased's estate, which includes the assets, rights and values left by him, as well as as the debts he was responsible for. On the other hand, the quality of heir, of a very personal, does not allow transmission, as highlighted by Silvio de Salvo Venosa (2023) when stating that "hereditary vocation is a very personal attribute and cannot be transmitted the condition of heir to third parties" *(Civil Law: Inheritance Law).*

The *de cujus,* as the deceased is conventionally called, is the author of the inheritance, because it is linked to the transmission of rights and obligations to the heirs. This transmission occurs immediately and automatically, by virtue of the *saisine principle,* positive in the art. 1,784 of the Civil Code of 2002. About this institute, Caio Mário da Silva Pereira (2021) teaches that "inheritance is automatically transmitted to heirs, from the moment of opening of the succession, even if they have not taken possession of the assets or expressed his acceptance" *(Institutions of Civil Law,* v. VI). Likewise, Carlos Roberto Gonçalves emphasizes that *saisine* has the function of "ensuring the continuity of patrimonial legal relations, preventing hereditary vacancy".

Proof of death is an essential requirement for the effects to take effect. inheritance. As a rule, death is certified by the death certificate drawn up at the registry office civil, under the terms of articles 77 et seq. of Law No. 6,015/1973 (Public Records Law). Exceptionally, the legal system allows succession based on the presumption of death or in the declaration of absence, hypotheses that, although exceptional, authorize the inheritance transmission even without physical proof of death. Therefore, only after the death — real or presumed — of the *deceased* does the succession begin and recognize the legal effects of inheritance.

Regarding the **presumption of death,** it is essential to distinguish between the two cases provided for by the Civil Code. In the absence previously decreed (art. 6), the *saisine* applied if only with the opening of the definitive succession, at which time death is presumed of the absent. On the other hand, in the presumption of direct death (art. 7), the *saisine* produces effect the moment the judge recognizes the presumption, granting immediate transmission of the hereditary rights. According to Venosa (2023), the opening of the succession in case of presumption of death must observe the legally established time for the *saisine,* ensuring the continuity of property relations and avoiding property vacancies.

Tartuce (2024, p. 1,488) explains that:

> "In general terms, there are two basic types of succession *mortis causa,* which can be taken from art. 1,786 of the Civil Code: Legitimate succession — that which arises from the law, which states the order of hereditary vocation, presuming the will of the author of the inheritance. It is also called *intestate* succession precisely because there is no will. Testamentary succession — originates from a last will and testament of the deceased, by will, legacy or codicil, mechanisms inheritance to exercise the private autonomy of the author of the heritage."

From this distinction, it can be seen that the Brazilian succession system combines two fundamental axes: the legal presumption of the deceased's will, which is manifested in legitimate succession, and private autonomy, exercised through succession testamentary. Thus, the Civil Code, when establishing these two modalities in art. 1,786, harmonizes the individual freedom of the testator with the family and social protection that guides the Law of Succession.

The competent forum for inheritance proceedings is that of the last domicile of the deceased, according to art. 1,785 of the Civil Code of 2002. In the absence of a fixed domicile, the sole paragraph of art. 48 of the 2015 Code of Civil Procedure establishes that the inventory must be processed in the jurisdiction where the real estate is located; if there are more than one, in any of them; if there is no real estate, the jurisdiction of any property applies members of the estate.

As for the applicable legislation, the rule is that of the moment of opening of the succession (date of death), both for legal and voluntary succession, under the terms of art. 1,787 of the Civil Code. Therefore, if the deceased dies in 2001, the rules of the Code apply. Civil of 1916, even if the inventory is initiated today. The Supreme Court Federal, in the judgment of RE 162,350, consolidated the understanding that the rule that regulates the capacity to inherit is that in force at the time of death, reinforcing the principle of the partial non-retroactivity of inheritance laws.

The inventory constitutes the judicial procedure by which the transmission of inheritance. Zanini (2024, p.7) highlights that:

> The opening of the succession should not be confused with the opening of the inventory. different moments. The opening of the succession occurs at the time of death (extinction of the natural person), while the opening of the inventory occurs when

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if the said action is filed. The assets left by the author of the inheritance are called estate, which is nothing more than a universality of goods, devoid of of legal personality.

The start of the inventory must occur within two months of the opening of the succession, before the competent court, according to art. 611 of the CPC/2015, in contrast with the 30-day period provided for in art. 1,796 of the 2002 Civil Code. This procedure ensures that the effects of *saisine* are immediately reflected, allowing the regularization of the estate's assets and protection of the rights of the heirs.

4. Legal Instruments for Succession Planning

The Brazilian legal system offers a variety of instruments capable of providing greater security, rationality and predictability to the process estate succession. Far from being just a legal formality, planning succession involves the harmonization between the will of the owner of the assets, the protection of legitimate inheritance of the necessary heirs and the preservation of the heritage throughout generations.

Choosing the most appropriate instrument doesn't depend solely on legal criteria. It's essential to consider the financial situation and strategic objectives. of the holder and, in many cases, economic and tax aspects. This analysis requires, therefore, an interdisciplinary approach, which goes beyond pure legal formalism. As Gagliano and Pamplona Filho (2021) highlight, succession planning must be understood as a true life project, a deliberate process that reflects intentions and priorities, and not just as an isolated or reactive act in the face of proximity of possible death.

4.1 – Will

The will remains the most traditional instrument and, at the same time, time, essential for succession planning in Brazil. Regulated by arts. 1,857 1,990 of the Civil Code, it allows the testator to dispose of his assets, in whole or in part. partially, always respecting the legitimacy of the necessary heirs.

In addition to the obvious function of determining the division of assets, the will offers a wider range of possibilities: it is possible to designate legatees, establish

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replacements, recognize children, appoint guardians for minors, impose burdens and even even convey provisions of a non-patrimonial nature, such as personal recommendations or instructions regarding the last will.

Despite its relevance, the will is surrounded by legal limits and strict formalities. The legitimate inheritance represents a restriction on the testator's freedom, ensuring that only half of their assets can be freely disposed of. Furthermore, the validity of the act depends on compliance with formal requirements; the absence of these may open the way for challenges and legal disputes.

The jurisprudence of the Superior Court of Justice has sought to balance respect for legal formalities while preserving the testator's true will. In recent decision, for example, the court stated that the private will should not be invalidated due to merely formal irregularities, provided that authenticity is demonstrated of the document and the free expression of the holder's will (REsp 2.080.530/SP, Rel. Min. Marco Aurélio Bellizze, 3rd Panel, tried on 10/30/2023, DJe 11/06/2023). Such positioning reflects the principle of conservation of the legal business, which guides the interpretation to favor the maintenance of the act when its essential purpose is achieved, preventing excessive formalities from compromising private autonomy.

4.2 – Living donation

The donation is configured as a legal instrument for anticipating the succession, allowing the disposer to organize the distribution of assets gradually and planned, mitigating potential conflicts between heirs. As provided by the Code Civil in its art. 544, the donation can be made with reservation of usufruct, clause often used to ensure the donor's subsistence. In this way, the anticipation of assets during life does not just serve a planning strategy inheritance, but also offers security to the donor.

In the words of Daniel Carnacchioni, "collation is the act by which the descendant, who competes with other descendants for the succession of common ancestor or with the spouse of the deceased, checks the value of the donations received from the author of the inheritance in life.

The descendant has the legal duty to indicate and list, in the inventory, the value of the donations received, with the purpose of equalizing legitimate donations, and not inheritance." Continuing, the author states: *"The purpose of collation is to equalize the legitimate (part*

unavailable that belongs to the necessary heirs - art. 1,845 of the Civil Code), and not equal to inheritance (since the inheritance is composed of the legitimate part and another available part). The violation of this legal duty imposed on the descendant entails a civil penalty, evasion, as per already analyzed in articles 1,992 to 1,996 of the Civil Code. In this sense, it is art. 2,002 of the Civil Code. In fact, such rule is in absolute connection with the provisions of art. 544 of the Civil Code, according to which the donation from ascendant to descendant, or from one spouse to another, means advance of what is due to them by inheritance, that is, advance of the legitimate share, which will be conferred by the collation institute" (CARNACCHIONI, 2017, p. 1699).

Donations are subject to the institution of **collation,** provided for in articles 2,002 and 2,003. of the Civil Code, which ensures equality among necessary heirs. The case law of the Superior Court of Justice reinforces this distinction, clarifying that only the transfer of property through liberality constitutes an advance of legitimate, as long as the use or occupation of goods, even if prolonged and free of charge, is not is equivalent to a donation. In the case of REsp 1,722,691/SP, the judgment decided that the claim of applicants to include in the collation the value corresponding to the occupation and use of a apartment and garage by one of the heirs was not valid, as it was a loan for use and not of donation (BRAZIL, STJ, REsp 1,722,691/SP, Rel. Min. Paulo de Tarso Sanseverino, Third Chamber, DJE 03/15/2019, p. 9-10).

Restrictive clauses, such as incommunicability, non-attachability and inalienability, are often incorporated into donations to protect the estate family, protecting assets from external risks and avoiding imbalances in the share hereditary. The ruling also reinforced that benefits of use or occupation do not constitute liberality that gives rise to collation, preserving the legal security of family liberalities (BRAZIL, STJ, REsp 1,722,691/SP, p. 10-11).
Therefore, succession planning through donation must be carefully structured, considering the donor's interests, legal limits and the preservation of family assets, respecting the distinction between donation and free loan, as established in the aforementioned case law.

4.3 – Family Holding

The creation of family holdings emerges as a modern strategy for succession planning, aimed at the efficient management of family assets and facilitating

of the intergenerational transfer of assets. Through the creation of a legal entity, usually a limited company, family members hold shares that represent ownership of common property. This structure allows for centralized administration and implementation of family governance clauses, promoting the continuity of business and the preservation of the family legacy (MIGALHAS, 2025a).

Among the main advantages of the family holding are: cost reduction with inventory, rationalization of asset management, protection against inheritance disputes and, in certain cases, tax planning (CONJUR, 2024). However, the use indiscriminate transfer of the family holding company may give rise to legal controversies. Article 426 of the The Brazilian Civil Code prohibits succession agreements and the creation of a holding company with the The intention to circumvent this prohibition constitutes an abuse of rights (BRAZIL, 2002).

The Court of Justice of São Paulo (TJSP) has recognized the possibility of disregard of the legal personality of the holding company when it is used with abusive purpose. In a recent decision, the São Paulo Court of Justice (TJSP) ruled that the creation of a holding company for inheritance and tax purposes does not, in itself, constitute fraud of execution; however, when the intention to remove creditors or hide assets is demonstrated, it is permitted to disregard of legal personality (TJSP, 2023).

Specialized studies and articles highlight that practices such as confusion patrimonial, omission of patrimony and use of the holding company for asset protection can generate civil and tax liability, highlighting the need for planning careful and compliance (MIGALHAS, 2025a; MIGALHAS, 2025b; CONJUR, 2024).

Therefore, it is essential that the constitution and management of the family holding company observe legal and ethical principles, avoiding practices that may lead to disregard of legal personality. It is recommended to draw up a clear articles of association, with governance and anti-dilution clauses; formal registration of assets in the name of the holding company, with bookkeeping and tax documentation; separate and regular accounting; and maintenance internal compliance, especially in linked operating companies (CRUMBS, 2025a; CRUMBS, 2025b).

4.4 – Prenuptial agreements and cohabitation contracts

The prenuptial agreement is an essential legal instrument in succession planning, allowing spouses to establish, in advance, the property regime that will govern the union, as well as specific property provisions. Its formalization is mandatory when one wishes to adopt a regime other than partial communion of assets, carried out by public deed before a notary public.

The jurisprudence of the Superior Court of Justice (STJ) has taken a position of significantly on the applicability and effects of the prenuptial agreement, especially in relation to the mandatory separation of assets and stable unions. The REsp 1,623,858/MG, for example, addressed the possibility of removing the application of Summary 377 of the Federal Supreme Court (STF) through an antenuptial agreement. This summary establishes that, in the mandatory separation of assets regime, the following are communicated: assets acquired during the marriage, provided that common effort is proven for its acquisition. The STJ understood that it is possible, through a prenuptial agreement, establish clauses that exclude the incidence of the aforementioned summary, allowing greater patrimonial autonomy to the couple.

Furthermore, REsp 1.706.812/SP expanded the effectiveness of the prenuptial agreement, allowing it to influence the property regime in stable unions, as long as it is formalized by public deed and that the parties have clearly expressed their intention that the pact governed the property relationship during the cohabitation. This decision reinforces the importance of the prenuptial agreement as a succession planning tool as well in stable unions, providing legal security in property arrangements agreed upon between the cohabitants.

In this way, the prenuptial agreement proves to be an effective legal instrument in succession planning, allowing spouses or partners to establish clear and specific patrimonial rules, adapted to your needs and objectives, respecting the legal limits established by the Civil Code and jurisprudence consolidated.

4.5 Life insurance and private pension plans

Life insurance and private pension plans are presented as alternatives relevant in the context of succession planning, as they allow the holder to direct amounts directly to previously indicated beneficiaries, outside the process of inventory. This feature gives them remarkable speed and efficiency, in addition to avoiding

tax and legal costs. As the Superior Court of Justice rightly pointed out,
The security nature of these institutions justifies the exclusion of inheritance values, since
that “in life insurance or personal accident insurance in the event of death, the stipulated capital
is not subject to the insured's debts, nor is it considered inheritance for all purposes
by law” (REsp No. 1,132,925/SP, Rapporteur Min. Luis Felipe Salomão, j. on 10/03/2013,
DJe 06/11/2013).

The STJ jurisprudence is firm in the sense that both the VGBL and the PGBL
assume a security nature. In a single-judge decision, Minister Antônio Carlos
Ferreira stated that “private pension plans are not part of the inheritance.
And all because, since it is an amount belonging to the beneficiary, it is not subject to debts
of the insured is not even considered an inheritance, since, if established by the contract, in favor of a
necessary heir, for example, is not subject to collation” (REsp No. 1,041,978/SP,
decision on 02/01/2017). This position reinforces the practical function of these plans
as a mechanism for immediate and efficient asset transfer.

However, the use of private pension plans in succession planning is not
is free from controversy. The Court of Justice of São Paulo, for example, has already ruled
by including private pension values in the inventory, understanding them as assets
financial assets subject to sharing (TJSP, Agr. No. 2163200-96.2016.8.26.0000, Rel. Donegá
Morandini, j. on 12/13/2016). This divergence demonstrates that, although consolidated in the
STJ, the issue still encounters resistance in some state courts, especially
in the face of evidence of fraud or violation of legitimate rights.

In this sense, succession planning through life insurance and
private pension plans must be conducted with caution, always paying attention to legal guidelines and
jurisprudence. As Minister Villas Bôas Cueva aptly summarized in the trial of
REsp No. 1,477,937/MG, “the amounts deposited in a private pension fund
closed are incommunicable and excluded from the division of the couple's assets, due to the incidence of
art. 1,659, VII, of the 2002 Civil Code” (j. on 04/27/2017). Thus, these instruments can be
extremely advantageous in providing speed and autonomy to the succession, but their
use cannot ignore the limits of legitimate use and the prohibition of fraudulent practices.

5. MODERN INSTRUMENTS FOR SUCCESSION ORGANIZATION.

In recent years, contemporary mechanisms have emerged that allow families organize and protect their assets strategically, making planning more efficient and less subject to conflicts. Among these instruments, the following stand out: if the family holding company and the trust, both capable of offering greater security in the management of assets, even if they present legal challenges and doctrinal controversies.

The family holding, as observed by Rodrigo Toscano de Brito (2018), derives from the English verb *to hold,* which means "to hold, maintain, control, or guard." It is about a limited liability company or business corporation, which holds participation in another legal entity with the aim of centralizing the assets of family, reduce tax costs, and facilitate succession planning. This structure allows the administration of assets to be organized in a professional and efficient manner, without compromising the continuity of the activities of the controlled company, which continues generating wealth and fulfilling your tax obligations.

However, the use of family holdings faces legal limitations. Art. 426 of the Civil Code prohibits succession agreements, prohibiting contracts on the inheritance of living person. Acts that violate this rule may be considered null and void, under the terms of articles 166, items VI and VII, and 167 of the Civil Code (BRAZIL, 2002). Therefore, the structuring of the holding company must respect the legitimate interests of the heirs and cannot configure early disposition of inheritance in disagreement with the law.

In addition to legal limitations, there are legal risks arising from the use undue holding company. Case law shows that family holding companies can be disregarded in court when used for abusive purposes. The Court of Justice of São Paulo (TJSP, 2023) understood that the constitution of the holding company for succession purposes and tax, in itself, does not constitute fraud of execution. However, if there is intent to remove creditors or hide assets, disregard of personality is permitted legal. Specialized studies and articles indicate that practices such as confusion patrimonial, omission of assets or undue shielding can generate civil and tax liability (MIGALHAS, 2025a; MIGALHAS, 2025b; CONJUR, 2024).

To reduce risks, it is recommended to draw up a clear articles of association, with clauses of governance and anti-dilution, formally register the assets in the name of the holding company, maintain separate and regular accounting, as well as adopt internal compliance, especially in linked operating companies. These measures strengthen legal certainty and preserve the holding company's function as a succession planning instrument.

The trust, an institution of Anglo-Saxon origin, emerges as an alternative to asset segregation. In this instrument, the assets constitute separate assets from the personal assets of the *trustee,* who holds formal ownership and must account for the administration. The trust also involves the *settlor,* who establishes the trust, and the *cestui que trust,* beneficiary who receives the economic fruits of the estate.

Despite its effectiveness in common law countries, the trust has no equivalent directly in Brazilian law. When used to manage and divide the assets of a living person, may conflict with art. 426 of the Civil Code, configuring an invalid act if it implies anticipation of inheritance or violation of legitimate inheritance. The improper use of the trust for asset shielding or fraud against creditors may result in absolute nullity of the legal act.

Therefore, the adoption of family holdings and trusts in Brazil requires careful planning and a balance between asset innovation and compliance with legal regulations. It is essential to ensure that such instruments fulfill their function without generating conflicts unnecessary judicial measures. The Brazilian experience indicates that legislative adjustments, such as flexibility of succession agreements and review of the level of legitimate inheritance, could increase the security and efficiency of succession planning, allowing families plan the division of your assets in an organized, transparent and legally sound manner (BRITO, 2018; OLIVA, 2018).

6. CONCLUSION

Succession planning proves to be one of the most relevant instruments of contemporary Civil Law, insofar as it concretizes the principle of autonomy private and ensures the social function of heritage, guiding the transmission of assets rational, predictable and legally secure manner. Throughout the research, it was found that the institute transcends the mere anticipation of inheritance, configuring true mechanism for asset management, dispute prevention and preservation of harmony family. Its adoption reflects not only an act of individual will, but also a stance of social and intergenerational responsibility, by allowing the holder to organize the destination of their assets in accordance with the law, protecting both their interests as those of their successors.

In the Brazilian regulatory context, succession planning finds support in the constitutional principles of human dignity, the social function of property and family solidarity, in addition to harmonizing with the fundamental right

inheritance provided for in Article 5, item XXX, of the Federal Constitution. Such grounds reinforce the legitimacy of legal instruments such as wills, donations with reservation of usufruct, family holdings, prenuptial agreements and life insurance and private pension plans, as long as they are used within legal and ethical parameters established by the law.

It was found, however, that the inappropriate use of these mechanisms, especially in the creation of holding companies or trusts for fraudulent purposes, may constitute abuse of law and give rise to the disregard of legal personality, as has been repeatedly recognized the jurisprudence of the Superior Court of Justice and state courts. Therefore, succession planning must be conducted in strict compliance with the legality and with specialized technical support, preventing the search for patrimonial efficiency exceeds the limits of legality and good faith.

From a practical perspective, succession planning helps to reduce the time and the cost of inventory processes, prevent family disputes and ensure liquidity for compliance with tax and inheritance obligations, preserving balance economic and emotional well-being of families. More than a legal act of asset disposal, it is a conscious and strategic choice that promotes the continuity of assets, the stability of family relationships and the effectiveness of distributive justice.

It is therefore concluded that encouraging the culture of succession planning is essential for strengthening legal certainty and consolidating a society that values prudence, predictability and respect for future generations. The institute, when correctly applied, plays a decisive role in harmonizing individual freedom, family protection and social justice, reaffirming its prominent place in the contemporary Brazilian legal scenario.

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