

INHERITANCE

Probate is the legal process of **administering the estate** of a **deceased** person by **resolving all claims** and distributing the deceased person's property under the valid **will**. A probate court decides the validity of a testator's will. A probate interprets the instructions of the deceased, decides the **executor** as the personal representative of the estate, and **adjudicates the interests of heirs** and other parties who may have **claims against the estate**.

INHERITANCE LAW

The national law of the deceased is applicable to inheritance issues in Poland. The main laws regulating inheritance in Poland are the Civil Code, Civil Procedure Code and Private International Law.

If the deceased had more than one nationality, including Polish, then Polish law is still **applicable**. If the deceased was a citizen of more than one country, then the applicable law is that of the country to which the testator was most closely connected.

Polish courts have jurisdiction if the inheritance proceedings relate to real estate located in Poland.

The circumstances are similar in the case of **perpetual usufruct, usufruct, easement, and mortgage**. If a deceased foreigner leaves **real estate** in Poland, and an heir cannot confirm his/her rights to the inheritance in a court in the country of nationality of the deceased, then the Polish court has jurisdiction in the matter of **confirming the acquisition, irrespective of** whether the heir is a Polish citizen, or a foreigner.

An application for confirmation of inheritance should be made to the Civil Division of the District Court competent for the last, permanent place of residence of the deceased. If this place cannot be confirmed, the court in the geographical location of the estate is the competent court. The court proceedings **to ascertain** whether a person is an heir involve a hearing, which usually should take between one and three months. Foreign **court rulings**, which confirm that a person is an heir, depend on the Polish court recognising the judgment. The application for **recognition of a foreign judgement** should be filed with the District Court competent for the geographical location to examine the issue.

The Polish court **examines ex officio** who is the heir; however, the court cannot examine what **components** comprise the estate. If there is a dispute concerning the ownership of a property title in the proceedings, this is resolved by separate proceedings. In accordance with the Polish Private International Law, the country where the property is located has jurisdiction in matters of **ownership and other property rights**.

Under the Polish law, within six months of the date from which the heir became aware of his/her appointment, he/she must make a declaration to either **accept or reject the inheritance**. If there is no declaration made by the heir within the above period, this **is deemed** as acceptance (with **limited liability for debts**); however, if the heir is a minor, or if there is no declaration by the heir within six months, it is deemed that the inheritance is accepted but **liability for debts limited to the value of assets**.

If a person dies intestate, inheritance follows the provisions of the Civil Code.

If there is no will, the deceased's children and **surviving spouse** are entitled automatically **under statute** to inherit equal portions; however the portion falling to the spouse cannot be less than one quarter of the total estate. If the intestate person has no **descendants**, the surviving spouse, parents or **siblings** inherit under statute. The surviving spouse's portion of the inheritance which he/she inherits jointly with parents or siblings of the deceased, equals one half of the estate.

If a foreigner inherits **ownership title to real estate** in Poland, the Act on the Acquisition of Real Estate by Foreigners does not apply so long as the foreigner is entitled to inherit under statute from the deceased. In accordance with the above, no permission is required for inheritance of real estate by a foreigner who inherits under statute.

Relatives of the deceased are authorized to a reserved portion.

The basic rule of inheritance in Poland is the freedom to **make a will**. The right to a reserved portion arises when the testator has made a will, and appointed persons outside the immediate family as heirs, or **disinherits** them completely or, when the portion of inheritance **awarded to a relative** does not cover the statutory reserved portion which he/she is entitled to.

The persons authorised to a reserved portion are limited to:

- The offspring of the testator, but if none survives the testator, then grandchildren, great grandchildren (descendants);
- The spouse;
- The parents of the testator, but only if the testator leaves no descendants and they were appointed automatically as heirs under the statute.

Children, spouses and parents of the testator, who would have been automatically appointed as heirs under the statute, are entitled to a half of that portion of the inheritance to which they are entitled under the statute. However, if a **beneficiary** is permanently **unfit for work**, or is a minor, he/she is entitled to two thirds of that portion. If a natural person leaves no automatic inheritors, the district or the State Treasury inherits. The district inherits when the last place of residence of the testator was in Poland. However, if it was abroad, the State Treasury inherits.

A will made by a foreigner is valid if it is made according to the law of the country where it was drawn up.

In Poland, it is not customary to make a will. The polls indicate that only a few percent of Polish people make a will. The Polish Supreme Court takes the stance that, in order for the will of a foreigner to be valid in Poland, it is enough for the will to be made in the form permitted by law in the country where it was drawn up, irrespective of what property is included in the inheritance. A person who wants to make a will in Poland must have **full legal capacity**. He/she must be 18 years old and cannot be under a legal disability. A will cannot be made by a legal representative or by proxy. The will can only be made in one of the forms permitted by law. A will in Poland can be made by three methods:

- In the testator's own hand (handwritten will) – this type of will must be written by the testator and signed and dated by him,

- By a **notary public** (as a **notarial deed**)
- Before the district administrator (wójt) (mayor or president of the city), secretary of the district (sekretarz gminy) or **the Registrar (= the Head of the Vital Statistics Office / Registry of Vital Records and Statistics)** in the presence of two witnesses (the will is made orally before an official and two witnesses).

Assets can be freely given during the lifetime of the owner. Polish law does not provide for restrictions in administering personal assets. Such assets can be freely **donated**. However, the declaration of a donor must be made in a form of a notarial deed. A legal representative of a person without legal capacity may demand **termination of a gift agreement** which was concluded whilst the donor still had full legal capacity, if the donation, because of its **value** and **lack of justification**, is excessive. It is not possible to demand termination of a gift agreement after two years have **elapsed** from its execution. **Minors must have legal representatives.** There are no **impediments** to minors **inheriting under a will**. When a person inherits (including a minor) he/she becomes a beneficiary ex lege at the time of death of the deceased. In principle no specific action need to be taken by the legal representatives of a minor; however, in court proceedings a minor must be represented by a legal representative.

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