Succession

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Poland

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1 How is the disposition of property upon death (will, joint will, agreement on succession) drawn up?

Under Polish law, property can be disposed of after death only by way of a will. Joint wills are prohibited. The following forms of will are accepted:

- a holographic will (*testament holograficzny*) entirely handwritten, signed and dated by the testator;
- a notarial will (*testament notarialny*) drawn up by a notary in the form of a notarial deed;
- an allographic will (*testament allograficzny*) made in the presence of two witnesses before the mayor of a municipality (*wójt*), the mayor of a town (*burmistrz*), the head of a city council (*prezydent miasta*), the chair of a district executive board (*starosta*), a provincial marshal (*marszałek województwa*), the chief administrative officer of a district or municipality (*sekretarz powiatu/sekretarz gminy*) or the head of a public registry office (*kierownik urzędu stanu cywilnego*);
- an oral will (*testament ustny*) (only when death is imminent or where on account of exceptional and emergency circumstances it is impossible or very difficult to make a will in any of the ways described above) in the presence of three witnesses;
- a traveller's will (*testament podróżny*) made aboard a Polish ship or aircraft when travelling (the testator declares their will to the captain of the ship or aircraft or their deputy in the presence of two witnesses);
- a military will (*testament wojskowy*) (drawn up in exceptional circumstances and by a strictly defined list of persons).

The only agreements on succession that are accepted are inheritance waiver agreements. Such agreements may be concluded by the future testator and the legal heir and must be in the form of a notarial deed to be valid.

2 Should the disposition be registered and if yes, how?

A will need not be registered to be valid. Wills drawn up in the form of a notarial deed or handwritten wills deposited with a notary may be registered with the National Council of Notaries (*Krajowa Rada Notarialna*).

3 Are there restrictions on the freedom to dispose of property upon death (e.g. reserved share)?

No restrictions on the testator's freedom to name an heir or heirs are imposed by Polish law. Likewise, the right to a reserved share does not restrict a testator's freedom to dispose of their property but protects the interests of their parents, descendants and spouse, who are entitled to payment of a specified amount.

4 In the absence of a disposition of property upon death, who inherits and how much?

The following rules apply in the absence of a will:

By law, the testator's children and spouse are first in line to inherit; the proportion inherited by the spouse may not be less than a quarter of the estate. The testator's grandchildren (where the testator's children are no longer living when the succession was opened), great-grandchildren or even more distant descendants (where closer descendants are no longer living when the succession was opened) are next in line to inherit. The Civil Code (*Kodeks Cywilny*) also provides that if a testator has no descendants, the testator's spouse and parents are entitled to succession by law; where there are no descendants and no spouse the whole estate passes to the testator's parents. Where one of the testator's parents is no longer living when the succession is opened, the share of the estate that would have passed to that parent passes to the testator's siblings in equal parts. Where neither parent of the testator is living when the succession is opened, the parents' shares pass to the testator's siblings. If any of the testator's siblings is no longer living when the succession is opened but has left descendants, the share of the estate that would have passed to that sibling passes to their descendants. If the testator has no descendants, parents, siblings or siblings' descendants, the entire estate passes to the testator's spouse. If the testator has no descendants, spouse, parents, siblings or siblings' descendants, the entire estate passes to the testator's grandparents; where one of the grandparents is no longer living when the succession is opened, their share of the estate passes to their children in equal parts. Where such a child is no longer living when the succession is opened, the share of the estate that would have passed to that child passes to that child's children in equal parts. Where the grandparent who is no longer living when the estate is opened has no children or grandchildren, the share of the estate that would have passed to them passes to the other grandparents in equal parts. If the testator does not leave a spouse or blood relatives entitled to the succession by law, the inheritance is divided equally between the children of the spouse of the testator, if both of their parents were no longer living when the succession was opened. Finally, in the absence of all of the aforementioned persons entitled to the succession by law, the statutory heir to the estate is the municipality of the testator's last place of residence, and where the testator's last place of residence in the Republic of Poland cannot be ascertained or the testator's last place of residence was abroad the statutory heir to the estate is the State Treasury.

5 What type of authority is competent:

5.1 in matters of succession?

Applicants should refer to a notary, the court with jurisdiction over the testator's last place of habitual residence, or – where the testator's last place of habitual residence in Poland cannot be ascertained – the court with jurisdiction over the place where the estate or part thereof is located (probate court) (*sąd spadku*). If none of these conditions apply, the probate court is the District Court for the Capital City of Warsaw (*sąd rejonowy dla miasta stołecznego Warszawy*).

5.2 to receive a declaration of waiver or acceptance of the succession?

Declarations concerning the acceptance or waiver of a succession are lodged with the court with jurisdiction over the place of residence of the person lodging the declaration, or before a notary. Persons residing abroad may lodge declarations concerning the waiver of a succession in the form provided for by the law of the place in which this action is taken.

5.3 to receive a declaration of waiver or acceptance of the legacy?

There are two types of legacy under Polish law: legacy by damnation and legacy by vindication. Only legacies by vindication can be accepted or waived. This option does not exist for legacies by damnation.

The authorities referred to in the previous question are competent to receive such declarations concerning legacies by vindication.

5.4 to receive a declaration of waiver and acceptance of a reserved share?

There are no reserves under Polish law. However, payment of a reserved share, i.e. of an appropriate sum of money, may be claimed. Declarations of waiver or acceptance of a reserved share are not submitted.

6 Short description of the procedure to settle a succession under national law, including the winding-up of the estate and sharing out of the assets (this includes information whether the succession procedure is initiated by a court or other competent authority on its own motion)

A person who wishes to obtain a document confirming their status as heir may apply to the court for a certificate of inheritance or apply to a notary for a registered certificate of succession. If there are several heirs, the estate may be divided, at their request, by the court in proceedings for the winding-up of the estate or by a notary by way of an agreement for the winding-up of the estate in the form of a notarial deed.

7 How and when does one become an heir or legatee?

A person becomes an heir or legatee respectively when the succession is opened under the law (however, the succession may be waived).

8 Are the heirs liable for the deceased's debts and, if yes, under which conditions?

Liability for the debts under the succession differs depending on how succession is accepted. An heir may accept succession with unlimited liability for debts (simple acceptance) (*przyjęcie proste*), accept succession with limited liability (acceptance subject to inventory) (*przyjęcie z dobrodziejstwem inwentarza*) or waive the succession. Where succession is accepted subject to inventory the heir is liable for debts under the succession only up to the value of assets of the estate as determined in the inventory list or inventory report. An heir who has waived succession is not liable for debts. A declaration concerning the waiver or outright acceptance of succession (*przyjęcie spadku wprost*) should be made within six months of the date on which the person concerned became aware of the inheritance. Where no such declaration is made during that time the heir is considered to have accepted succession subject to inventory. Co-heirs are jointly liable for debts under the succession until the estate has been divided. From the moment the estate has been divided the heirs are liable for debts under the succession in proportion to their shares.

9 What are the documents and/or information usually required for the purposes of registration of immovable property?

In order to enter immovable property forming part of the inheritance in a land and mortgage register, the heir must, as a rule, present documents confirming their status as heir, i.e. a court certificate of inheritance (*postanowienie sądu o stwierdzeniu nabycia spadku*) or a registered deed certifying succession (*zarejestrowany akt poświadczenia dziedziczenia*).

9.1 Is the appointment of an administrator mandatory or mandatory upon request? If it is mandatory or mandatory upon request, what are the steps to be taken?

Firstly, under Polish law, an administrator of the estate (*zarządca spadku*) may be appointed *ex officio* or on request when, for any reason, there is a risk that the estate will not be distributed as intended. To that end, the interested party should submit an application to the court with jurisdiction over the testator’s property to demonstrate that they are an heir or legatee, or are entitled to a reserved share. An application may also be submitted by the executor of a will, a co-owner of property, a person jointly entitled to the testator’s rights, a creditor with a written proof of debt against the testator or a tax office.

Secondly, in the case of an unclaimed inheritance, the court appoints, *ex officio* or on request, an administrator of the estate.

9.2 Who is entitled to execute the disposition upon death of the deceased and/or to administrate the estate?

In their will, a testator may appoint the executor (*wykonawca*), who will administer the estate after the testator's death. The executor's appointment becomes effective when the succession opens (i.e. upon the death of the testator). The appointed executor may submit a declaration refusing to accept the appointment as executor to a court or a notary. Such a declaration results in the forfeiture of the status of the executor of the will. If no executor has been appointed or if the appointed executor has refused to accept the appointment, the estate is administered by the heirs.

9.3 What powers does an administrator have?

The executor of a will should administer the estate, pay debts under the succession, in particular execute bequests and instructions, and subsequently distribute the estate to the heirs in accordance with the will and the relevant legislation and, in all cases, immediately after distributing the estate.

The executor may sue and be sued in matters arising from the administration of the estate, an organised part thereof or a specified asset. They may also sue in matters relating to rights forming part of the inheritance and be sued in matters relating to debts under the succession.

The executor should also issue the subject of a specific bequest to the person to which such a bequest was made.

10 Which documents are typically issued under national law in the course of or at the end of succession proceedings proving the status and rights of the beneficiaries? Do they have specific evidentiary effects?

A person who is a statutory heir must submit copies of appropriate civil status documents to demonstrate their relationship to the deceased (e.g. birth certificate, marriage certificate). An heir or legatee should submit the will to demonstrate their rights to the inheritance.

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