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Q&A: Wills & Succession in Cyprus



Introduction

Cyprus has a complicated system of forced heirship in which a portion of a deceased's estate must be effectively passed to surviving family members according to a set system of inheritance. Natural children of deceased persons are entitled to an equal share of their parent's property (along with their parents' spouses).

This forced heirship regime means that even if a deceased writes a Will leaving a certain portion of their estate as a gift to their spouse, their wishes will be deemed invalid if there are natural children who are entitled to a fixed minimum percentage of the estate.

1. What is a Will?

A will is a binding testamentary document allowing the person making the will to appoint executors to administer their estate and dispose of it to the legal heirs.

Basics:

- A testamentary document is a document taken to be proof of your wishes to be followed on your death.
- The testator is the person making the will.
- The executors are the people (it's best to have more than one) that you have chosen to look after your affairs. They 'execute' the will in accordance with your wishes.
- Your estate is everything you own – money, property, assets, and other possessions - minus everything you owe.
- The beneficiaries are the people who you are leaving something to in your will, whether it is money, assets, individual items, or you are letting them off a debt.

Or in other words:

Your will is the formal document that sets out what is to happen to your property and possessions when you die. It is a legal document that is binding on your executors – which means that they do not have any choice whether or not to follow it.

A will only takes effect on the death of the person who made it and can be revoked at any time before then.

If you do not have a valid will you are said to be *intestate*. This means that neither you nor anyone else – except the law – has control over what happens to your property after your death.

2. Which laws govern and regulated wills & succession in Cyprus?

Wills and Succession law in Cyprus is governed by both domestic and EU law. In relation to Cyprus law, the most significant enactments are:

- a. The Wills and Succession Law, Cap. 195 as amended from time to time;
- b. The Administration of Estates Law, Cap. 189 as amended from time to time and
- c. The Probates (Re-Sealing) Law, Cap. 192 as amended from time to time
- d. Moreover, EU law is relevant and in particular, the EU Succession Regulation (the "Succession Regulation") 650/2012 that allows EU citizens to choose the law of the country of their nationality as the governing law of their will.

3. What are the requirements for a Will to be valid?

- a. A will must be made in writing.
- b. The testator must sign the Will at the bottom of the last page and put his/her initials on each and every page of the Will.
- c. The testator must sign in the presence of at least two witnesses who will also sign the Will in the presence of each other and the testator.

4. Can a Will be revoked?

Yes, it can be revoked by another Will which will explicitly state that the former Will is revoked.

It can also be destroyed by a testator or a person authorised by the testator. A Will is considered to be revoked if the testator gets married or has a first-born child at a time following the execution of the Will.

5. Are there any restrictions regarding the terms of a Will?

Yes, there are particular restrictions regarding the way assets can be disposed through a Will. As mentioned above, Cyprus has what we refer to as a "forced heirship regime", meaning that certain relatives / heirs, such as a spouse or children, cannot be excluded from an inheritance and they have a right to a fixed minimum percentage of the estate.

6. What is a Forced Heirship Regime?

Such a regime essentially exists to protect the rights of close relatives of the testator. The part of the property that the testator can dispose of with a Will is referred to as "disposable portion". The remaining property is referred to as "statutory portion". The calculation of both the disposable and statutory portion depends on who the surviving relatives at the time of death are.

7. What happens if a Will disposes more than the disposable portion?

The Will not be rendered void, but the disposable portion will be reduced accordingly.

8. What happens with the rest of the portion, the so-called statutory portion?

The remaining, statutory portion will be disposed meaning that the distribution will be made accordingly.

9. Calculations

The portion of the spouse is calculated first and then the rest of the estate will be distributed to the relatives of the deceased depending on the degree of kindred. The share of the surviving spouse is as follows:

- a. Where the deceased left a child or a descendant of a child, the spouse's share is equal to the share of each child.
- b. Where the deceased left no child or descendant of a child but has an ancestor or descendant of an ancestor within the third degree of kindred, the spouse is allowed 50% of the net estate.
- c. Where the deceased has left a relative within the fourth degree of kindred, the spouse is entitled to 75% of the net estate.
- d. Where the deceased left no relative within the four degrees of kindred the spouse is entitled to the entire net estate.

10. Is it obligatory to have a Will?

No, it is not obligatory. If someone passes away without having left a will, he /she will pass away intestate and his/her assets will be distributed in accordance to the rules of intestacy and succession.

11. How is an estate distributed according to the rules of intestacy?

There are four classes of kindred who are entitled to inherit an intestate person:

- a. *First class*: Legitimate children of the deceased and descendants of any of the deceased's children who died during his/her lifetime;
- b. *Second class*: Any parent or sibling of the deceased;
- c. *Third class*: The closest in degree of kindred living ancestors of the deceased. Such as a grandparent.
- d. *Fourth class*: The nearest relatives of the deceased alive at the time of his/her death up to the sixth degree of kindred (i.e. cousin and siblings of grandparents).

12. How is immovable and movable property owned by foreign nationals dealt with?

Under Article 22 (Choice of law) of the EU Succession Regulation, foreign nationals can choose whether the law of their country of nationality applies to the succession of their estate. This applies to all EU states.

By way of example, German nationals with property in Cyprus can opt for German law to apply for the administration of their estate in the event of their .The decision for the German to law to be applied must clearly be stated in the Will as failing to do so will render Cypriot law of succession applicable by default.

It is a well – know rule of law that succession to immovable property, is governed by the “law of the land” (lex situs), that is, by the law of the country where the immovable property is situated.

13. What are the tax obligations, if any?

There is no inheritance tax in Cyprus as the Estate Duty (Amending) Law 2000 was abolished on the 1st of January of 2000.

It is advisable that individuals domiciled elsewhere should seek legal/tax advice as they may be liable and subject to pay inheritance tax in that specific country.

If you would like to know more about how we can help you plan your inheritance for the future, please get in touch.

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