

Guide to Inheritance and Probate

The law governing wills and succession in the TRNC is chapter 195 of the Laws of Cyprus. In general, British expatriates have complete freedom to dispose of their property in the TRNC by will to whomever they choose. For information on the procedure for making a will, please request a copy of our 'Guide to Making a Will in the TRNC'. The procedure to be followed on the death of a person depends on two factors:

- Whether or not the deceased was, at the time of his death, domiciled in the TRNC
- Whether or not the deceased left a valid will

PERSONS DOMICILED IN THE TRNC OR WHO HAD A RESIDENCE IN THE TRNC AT THE DATE OF THEIR DEATH

Where the deceased died intestate (without making a will)

The Intestacy Rules

Owing a property jointly with your spouse does not ensure that your spouse will inherit your share of the property on your death unless you leave a will to this effect. Property which is co-owned is deemed to be owned by the co-owners as tenants in common rather than joint tenants.

Where a person domiciled in the TRNC dies intestate (without leaving a will), leaving behind a surviving spouse, then the entitlement of the surviving spouse is as follows: 1/6th of the estate will pass to the surviving spouse (or if there are more than 5 children, the spouse will receive a share equivalent to the share of one of the children) and the rest will be divided between the children (or where the children are deceased, the grandchildren)

Where there are no surviving children, 1/2 of the estate will pass to the surviving spouse and the rest will pass to the surviving parents of the deceased and siblings of the deceased or where the siblings are also deceased to their children (i.e. the nieces/nephews of the deceased).

Where there are no surviving children, parents, siblings or nieces/nephews, the surviving spouse will receive 3/4 of the estate and the rest will be divided between the other closest living relatives of the deceased, up to the 4th degree of kindred (e.g. first cousins etc)

Where there are no surviving relatives within the 4th degree of kindred, the spouse will inherit the whole of the estate.

Where a person domiciled in the TRNC dies intestate without leaving behind a spouse, the whole of the estate will pass to the children of the deceased (or where the children are deceased, the grandchildren). If there are no children or grandchildren, then the estate will pass to the surviving parents of the deceased and surviving siblings of the deceased or where the siblings are also deceased to their children (i.e. the nieces/nephews of the deceased). If there are no surviving parents or brother/sisters or nieces/nephews, then the estate will pass to the next surviving

relatives of the deceased. If there are no surviving relatives whatsoever, then the estate will pass to the state.

The Intestacy Procedure

The probate procedure on intestacy for those domiciled in the TRNC at the time of their death is as follows:

An initial consultation is arranged with the family of the deceased in order for us to take details of the legal heirs of the deceased, the property which the deceased left behind and the person who would like to be appointed as the Administrator of the estate (this can be a family member but should be someone who is in the TRNC as this person will need to sign the probate papers in person. If this is not practical, we can act as the Administrator). If the legal heirs include minors, two Administrators must be appointed.

Once the family has decided who should be appointed as the Administrator, a consent form (known as a 'Muvafakatname' in Turkish) needs to be obtained from each of the legal heirs confirming their consent to the appointment of that person as the Administrator. The consent form is prepared by us and is signed by the legal heirs at a local notary in the TRNC or instructions can be provided for this to be signed abroad. Where it is not possible to obtain the consent form from all of the legal heirs, it is possible to arrange for a copy of the probate application to be served on the legal heirs by registered post giving them 8 days to file an objection to the appointment. This is usually not very practical as the Probate Registrar requires the signature of the legal heir personally on the delivery slip and most international couriers do not obtain this. It is, therefore, also possible to advertise the proposed appointment of the Administrator in a local TRNC newspaper and, again, wait 8 days for any objections to be filed.

Next, we will prepare a list of the names of the legal heirs of the deceased and this must be signed by the local Muhtar and his two assistants (Azars) in the village where the deceased resided. This letter is called a 'Muhtar Şahadetnamesi' in Turkish. Usually, the family will take this to the Muhtar and return it to us.

These two documents then need to be submitted by us to the District Court in the district in which the deceased resided together with the original death certificate, application (to be prepared by us detailing the date/place of death of the deceased, the names of the deceased's legal heirs, the name of the person who is to be appointed as the Administrator and the estimated value of the estate) and an accompanying affidavit (to be prepared by us and sworn by the person applying to be appointed as the Administrator). In addition, a bond must be signed by two guarantors who will agree to guarantee the correct performance of the duties of the Administrator. The amount of the bond must be twice the estimated value of the estate and the guarantors must swear a separate affidavit confirming that they have sufficient personal assets to meet this. Where we act as the Administrator, we can arrange for our staff to act as guarantors to the performance of our obligations as Administrators. Where, however, a member or the family of the deceased is to act as the Administrator, the family must also appoint two persons to act as the guarantors. There is a waiting period of 14 (days) after the application is handed in before any further action can be taken. When the application is submitted, a sealed copy of the application must be obtained from the Probate Registrar and given to the Tax Office with the relevant application forms. The Tax Office will issue a certificate which must then be presented to the Probate

Registrar after the expiry of the 14 day waiting period. The Grant of Probate can then be issued.

Once the Grant has been issued, any money in any bank accounts in the name of the deceased can be withdrawn by the Administrator on production of the Grant and the Administrator can also apply to the Vehicle Registration Office for any vehicles in the name of the deceased to be transferred to the legal heirs in accordance with the intestacy rules. The Executor also has the power to sell any immovable properties of the deceased, however the Land Registry will require each of the legal heirs to sign a certified consent form consenting to the sale. Thereafter, the executor must complete the tax declaration forms (VD103 and VD104) and submit these to the Tax Office for the tax assessment to be carried out. Currently, the inheritance tax threshold is 30 times the annual minimum wage (which equates to around £100,000). If the value of the estate exceeds that amount, inheritance tax will be paid on the amount over the £100,000 threshold at the rate of 1%. This will be calculated by the Tax Office and payment must be made to the Tax Office. If the value of the estate is less than the threshold, the Tax Office will issue an exemption certificate. This part of the process can be fairly lengthy as, if the estate includes immovable property, the Tax Office will need to obtain a Land Registry valuation. This can take several months.

Once the inheritance tax assessments have been completed and any payments made, the file passes to the Land Registry for the title deeds to any immovable property to be registered in the names of the beneficiaries as stated in the will. It can take several months for the Land Registry to complete this process. Where the beneficiaries under the will wish to divide the property in a way other than that specified in the will or in the intestacy rules, an agreement can be drawn up and signed between the beneficiaries and presented to the Land Registry for the Land Registry to distribute this accordingly.

Where the deceased died leaving a valid will

Where a person domiciled in the TRNC at the date of their death dies leaving a valid will, the estate of the deceased will pass according to the terms of that will and the probate procedure will be as follows:

An initial consultation is arranged with the family of the deceased in order for us to take details of the legal heirs of the deceased, the property which the deceased left behind and for us to check the validity of the will.

As with intestacy (outlined above), we will prepare the 'Muhtar Şahadetnamesi' for the family to take to the Muhtar and return to us. This will then need to be submitted by us to the local District Court in the District in which the deceased resided together with the original will, the original death certificate, the application for the Grant (to be prepared by us and detailing the date/place of death, the names of the legal heirs, the name of the person who is appointed as the Executor and the estimated value of the estate) and an affidavit (to be prepared by us and sworn by the person appointed as Executor of the will under which the Executor swears to administer the estate properly and correctly). Where the person appointed as the Executor in the will is not willing/able to act as Executor, then we can take a renunciation from that person. The family will then need to decide who should be appointed as the Administrator in place of the Executor. Once the family has decided on this, a consent form or 'Muvafakatname' (detailed above under intestacy) needs to be obtained from each of the legal heirs confirming their consent to the appointment of the Administrator.

As with intestacy, a bond must be signed by two guarantors who will agree to guarantee the correct performance of the duties of the Executor. Finally, an affidavit needs to be sworn by the witnesses who attested the will. The remainder of the process is the same as with intestacy.

PERSONS NOT DOMICILED OR WHO DID NOT HAVE A RESIDENCE IN THE TRNC AT DATE OF THEIR DEATH

The families of British persons who were not domiciled in the TRNC or did not have a residence in the TRNC at the date of their death and who, as such, are not able to obtain the letter from the Muhtar detailed above must apply to obtain the Grant of Probate or the Grant of Administration from the courts in the UK. Once the Grant of Probate or Grant of Administration has been obtained in this way, an application can then be submitted to the Lefkosa District Court for this Grant to be re-sealed for use in the TRNC. In order to submit the application for re-sealing, we will require the following documents:

- The original Grant of Probate or Grant of Administration certified by the TRNC Representative Office in the country in which it was granted (or where there is no TRNC Representative Office in that country, the Turkish Embassy in that country)
- The original death certificate
- The original will (if applicable)

We will also take a power of attorney from the person appointed as the Executor or Administrator under the Grant so that we can complete the administration/distribution of the estate in accordance with the will (if there is one) or, if there is no will, in accordance with the intestacy rules detailed above.

The families of non-British subjects who were not domiciled in the TRNC at the date of their death and who, as such, are not able to obtain the letter from the Muhtar detailed above, must follow the procedures outlined above for those domiciled in the TRNC (except for obtaining the Muhtar Şahadetnamesi). If a valid will was left, the procedure under the heading 'where the deceased left a valid will' is followed. If a valid will was not left, the procedure under the heading 'where the deceased died intestate' is followed. The only difference is that the application is filed in the Lefkosa District Court, whereas when the deceased is domiciled in the TRNC, the application would be filed in the Court in the district in which the deceased resided.

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