

## **Guide to Inheritance and Probate**

### **The Inheritance Laws**

#### **Where the deceased died having left a will**

The law governing wills and succession in the TRNC is chapter 195 of the Laws of Cyprus. In general, any person who was born, or whose father was born, in the United Kingdom or any Commonwealth country has complete freedom to dispose of their movable property (i.e. personal possession or money) and immovable property (i.e. land or real estate) in the TRNC by will to whomever they choose. Therefore, if the deceased was a person who was born, or whose father was born, in the United Kingdom or any Commonwealth country, the whole of the estate will pass according to the terms of the deceased's will.

Persons who were not born, or whose father was not born, in the United Kingdom or another Commonwealth country have complete freedom to leave their movable assets (i.e. money, personal possessions etc.) by will. However, they do not have complete freedom to dispose of their immovable property (i.e. land, real estate) by will. Only a certain portion of the immovable property, known as the 'disposable portion', can be left by will. The remainder of the immovable property, known as the 'statutory portion', must pass to certain legal heirs according to the law. The share of the immovable property which can be left by Will (the disposable portion) depends on which living relatives that person has at the date of their death.

#### **What happens to the disposable share in different circumstances?**

As outlined above, the whole of the movable assets will pass according to the terms of the Will. However, the share of the immovable assets that a person can leave by Will depends on which living relatives that person has at the date of their death.

- If the person dies leaving behind a spouse or parent, but no children, the disposable portion is  $\frac{1}{2}$  (**one half**) and  $\frac{1}{2}$  of the immovable assets will pass according to the terms of the will.
- If the person dies leaving behind a child or grandchild, the disposable portion is  $\frac{1}{3}$  (**one third**) and  $\frac{1}{3}$  of the immovable assets will pass according to the terms of the will.
- If the person dies without leaving behind a spouse or child or grandchild or parents, they have complete freedom of disposition and their **whole estate (i.e. 100%)** can pass according to the terms of the will.

### What happens to the other (statutory) portion?

The remainder of the immovable property will pass to certain legal heirs according to the law as follows:

- If the person dies leaving behind a spouse and children then the entitlement in the statutory portion will be as follows:
  - If the deceased has left behind more than 5 children, then the spouse and each child receives an equal share of the statutory portion (or where a child is deceased, then their share passes to any children they may have).
  - If the deceased has less than 5 children, then the spouse receives 1/6 of the statutory portion and each child receives an equal share of the other 5/6 of the statutory portion (or where a child is deceased, then their share passes to any children they may have).
- If the person dies leaving behind no spouse, then each child receives an equal share of the statutory portion (or where a child is deceased, then their share passes to any children they may have).
- If the person dies with no surviving children, 1/2 of the statutory portion will pass to the surviving spouse and the other 1/2 share of the statutory portion will pass to the surviving parents of the deceased and siblings of the deceased in equal shares or where the siblings are also deceased to their children (i.e. the nieces/nephews of the deceased).
- If the person dies leaving behind no children, no parents, siblings or nieces/nephews, 3/4 share of the statutory portion will pass to the surviving spouse and the rest will be divided between the other closest living relatives of the deceased, up to the 4<sup>th</sup> degree of kindred (e.g. first cousins etc.)
- If the person dies with no surviving relatives within the 4<sup>th</sup> degree of kindred, the spouse will inherit the whole of the statutory proportion.
- If the person dies with no children, no spouse, no surviving parents or brother/sisters or nieces/nephews, then the statutory part of the estate will pass to the next surviving relatives of the deceased up to the 6<sup>th</sup> degree of kindred.
- If there are no surviving relatives whatsoever up to the 6<sup>th</sup> degree of kindred, then the statutory proportion of the estate will pass to the state.

### **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. This is because a 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 dies intestate (without leaving a will), leaving behind a surviving spouse, then the entitlement of the surviving spouse is as follows:

- If the deceased has left behind more than 5 children, then the spouse and each child receives an equal share of the statutory portion (or where a child is deceased, then their share passes to any children they may have). If the deceased has less than 5 children, then the spouse receives 1/6 of the statutory

portion and each child receives an equal share of the other 5/6 of the statutory portion (or where a child is deceased, then their share passes to any children they may have).

- Where there are no surviving children, ½ 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 in equal shares or where the siblings are also deceased, then their share will pass 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 ¾ of the estate and the rest will be divided between the other closest living relatives of the deceased, up to the 4<sup>th</sup> degree of kindred (e.g. first cousins etc)
- Where there are no surviving relatives within the 4<sup>th</sup> 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 up to the 6<sup>th</sup> degree of kindred, then the estate will pass to the state.

For information on the procedure for making a will, please request a copy of our 'Guide to Making a Will in the TRNC'.

### **The Probate Procedure**

On the death of a person, an application must be made to the Court for a Grant of Probate, a document which gives the Executor named in the deceased's will or another person (the 'Administrator') the legal right to deal with the deceased person's property, bank accounts, money, car and other possessions (their 'estate').

In order to advise on a probate matter, we will require the following initial documents and information:

- A copy of the deceased's death certificate – a copy will suffice for the purposes of providing initial advice, however, the original death certificate will be required when submitting the Grant of Probate application to the Court;
- The deceased's passport or identity card copy;
- Full details and supporting evidence of assets and liabilities of the deceased e.g. title deed copies, car log books, bank statements, company documents;
- Full details (including countries of residence) of the deceased's beneficiaries/legal heirs; and
- A copy of the will (if applicable) so that we can check its validity in accordance with the TRNC laws.

The probate procedure is as follows:

#### Step 1: Initial Consultation

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 (if applicable). If no Executor has been appointed by the deceased in the will or if the Executor appointed in the will is unable/unwilling to act, we will also discuss who would can 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 beneficiaries/legal heirs include minors (i.e. persons under the age of 18), two Administrators must be appointed. Where it is not possible for the initial consultation to take place in person, this can be conducted by email or over the telephone.

#### Step 2: Probate documents to be completed by legal heirs

If the deceased died leaving a valid will, 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 needs to be obtained from each of the beneficiaries/legal heirs confirming their consent to the appointment of that person as the Administrator.

The renunciation and consent forms are prepared by us and are signed by the beneficiaries/legal heirs at a local notary in the TRNC or instructions can be provided for these 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.

#### Step 3: Letter from local Muhtar

Where the deceased was domiciled in the TRNC or had residence in the TRNC at the date of their death a letter from the local Muhtar stating the legal heirs will need to be obtained. 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. Usually, the family will take this to the Muhtar and return it to us.

The families of persons 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, will need to provide a declaration stating who the legal heirs are and sign this at the TRNC Representative Office in their country of residence along with the other probate documents. 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.

#### Step 4: Filing of Grant of Probate application

The consent forms and the letter signed by the local Muhtar (if applicable) 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 Executor/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 Executor/Administrator). In addition, a bond must be signed by two guarantors who will agree to guarantee the correct performance of the duties of the Executor/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 Executor/Administrator, we can arrange for our staff to act as guarantors to the performance of our obligations as Executor/Administrator. Where, however, a member or the family of the deceased is to act as the Executor/Administrator, the family must also arrange and 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.

#### Step 5: Investigation of Assets (if applicable)

Once the Grant of Probate has been issued, if it transpires that there are any further assets, or if the value of any bank accounts in the name of the deceased could not be ascertained before the application was made, then these assets may be investigated and then added to the estate. For example, if there is a car in the name of deceased and the family do not have the log book, then, at this stage, the Executor/Administrator can write to the vehicle registration office to request details of the vehicle. In addition, if there are any bank accounts in the name of the deceased, at this stage, the Executor/Administrator can write to the bank to request bank statements showing the bank balances at the date of death. Once this has been done, the Executor/Administrator can then apply to the court for these assets to be added to the value of the estate.

#### Step 6: Inheritance Tax Assessments

The Executor/Administrator must complete the tax declaration forms 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 £120,000). If the value of the estate exceeds that amount, inheritance tax will be paid on the amount over the 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.

### Step 7: Distribution of Assets

Once the Grant of Probate has been issued and the inheritance tax assessments have been completed and any outstanding payments made, any money in any bank accounts in the name of the deceased can be withdrawn by the Executor/Administrator and the Executor/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 and/or the beneficiaries stated in the will in accordance with the Law. At this point, the Executor/Administrator also has the power to sell any vehicles and immovable properties of the deceased, however the Vehicle Registration Office and the Land Registry will require each of the legal heirs to sign a certified consent form consenting to the sale.

In terms of immovable properties, if the deceased had title to the immovable properties registered in their name, the file passes to the Land Registry for the title deeds to any immovable properties to be registered in the names of the legal heirs and/or the beneficiaries as stated in the will in accordance with the Law. It can take a few months for the Land Registry to complete this process. In cases where the deceased has not taken title to the property, at this stage, a new contract of sale will be prepared between the vendor and the legal heirs/beneficiaries. The contract of sale in the name of the deceased will be de-registered from the Land Registry and a new contract of sale will be registered at the Land Registry in the names of the legal heirs/beneficiaries.

Where the legal heirs/beneficiaries wish to divide the assets in a way other than that specified in the will or in a way other than that provided by the intestacy rules, an agreement can be drawn up and signed between the legal heirs/beneficiaries and presented to the relevant authorities for the assets to be distributed accordingly.

### Step 8: Closing Application

Once the deceased's assets have been distributed to the legal heirs/beneficiaries in accordance with either the intestacy rules and/or the terms of the will and the Law, we will then submit an application to the Court, with supporting evidence to show that the estate has been correctly distributed, in order to conclude the probate.

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