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TYPES OF INHERITANCE IN UKRAINE

- by law;
- according to the will.

Will- is a written document on inheritance, which contains a person's disposition in the event of death regarding his property, property rights. The will must be certified by a notary and with the copy remaining in the notarial file.

In the absence of a will, its invalidation, non-acceptance of the inheritance or refusal to accept it by the heirs under the will, as well as in the event that the will does not cover the entire inheritance right, inheritance occurs by law in the order of precedence.

Inheritance by law applies if:

- there is no will;
- the will is declared invalid;
- the will does not cover all property;
- The heirs under the will refused/did not accept the inheritance.

GENERAL PRINCIPLE:

Each subsequent turn is called upon to inherit only in the absence of heirs from the previous turn.

The first tier includes:

- children of the testator (natural, adopted, conceived during life and born after death);
- the spouse who survived the testator;
- the testator's parents.

All first-degree heirs inherit in equal shares.

The second tier includes:

- brothers and sisters of the testator (full and half-brothers);
- the testator's grandparents (both on the father's and mother's side).

All second-degree heirs inherit in equal shares.

The third tier includes:

- the testator's uncle and aunt.

All third-degree heirs inherit in equal shares.

The fourth tier includes:

- persons who lived with the testator as a family for at least 5 years prior to the opening of the inheritance, but were not married to him.

The key here is: actual family relationships, shared life, mutual rights and obligations - proof is almost always through the court.

The fifth tier includes:

- other relatives of the testator up to the sixth degree of kinship inclusive;
- dependents of the testator who:
 - were not members of his family;
 - but were in his care for at least 5 years before his death

Relatives of a closer degree of kinship eliminate those of a more distant degree.

Right of Representation in Ukrainian Inheritance Law

Under Ukrainian inheritance law, the right of representation allows the descendants of an heir who died before the decedent to inherit the share that such heir would have received if alive. This mechanism applies only in statutory inheritance and operates within strictly defined family lines. In particular:

- grandchildren and great-grandchildren inherit in place of the decedent's deceased children;
- nephews and nieces inherit in place of the decedent's deceased siblings;
- first cousins inherit in place of the decedent's deceased uncles or aunts.

The inherited share is divided equally among the descendants of the deceased heir. The right of representation applies only if the original heir died prior to or simultaneously with the decedent. It does not apply where the heir is alive but refused the inheritance, failed to accept it, or was excluded as an unworthy heir.

What is included in the inheritance?

The inheritance includes all rights and obligations that belonged to the testator at the time of opening the inheritance and did not cease as a result of his death.

The inheritance does not include rights and obligations that are inextricably linked to the person of the testator, in particular:

1. personal non-property rights;
2. the right to participate in societies and the right to membership in associations of citizens, unless otherwise established by law or their constituent documents;
3. the right to compensation for damage caused by injury or other damage to health;
4. rights to alimony, pension, assistance or other payments established by law;
5. personal non-transferable rights and obligations closely connected with the person of the deceased.

Where should the application for acceptance of inheritance be submitted?

An inheritance is opened as a result of the death of a person or their declaration as deceased. Heirs by will and by law may be individuals who are alive at the time of opening the inheritance, as well as persons who were conceived during the testator's lifetime and born alive after the opening of the inheritance.

An heir by law or by will, in order to accept the inheritance within the period established by law, must submit an application to a notary, in rural settlements - to an authorized official of the relevant local government body. The inheritance can be registered with both a public and private notary, at the place of opening the inheritance.

Place of discovery of the inheritance:

The place of opening the inheritance is the last place of residence of the testator. If the place of residence of the testator is unknown, the place of opening the inheritance is the location of the immovable property or its main part, and in the absence of immovable property - the location of the main part of the movable property. If the testator had his last place of residence in the territory of a foreign state, the place of opening the inheritance is determined in accordance with the Law of Ukraine "On Private International Law" (Article 1221 of the Civil Code of Ukraine).

Inheritance with a foreign element:

Subject to the provisions Articles 71, 72 of the Law of Ukraine "On Private International Law" Inheritance relations are governed by the law of the state in which the testator had his last place of residence, unless the testator has chosen in his will the law of the state of which he was a citizen. The choice of law by the testator will be invalid if his citizenship has changed after the will was made. Inheritance of immovable property is governed by the law of the state in whose territory this property is located, and property subject to state registration in Ukraine - by the law of Ukraine.

Escheat of inheritance (Recognition of inheritance as escheated property):

In the event of the absence of heirs by will and by law, their exclusion from the right to inherit, their refusal to accept the inheritance the local government body at the location of the real estate, and in the absence of real estate - at the location of the main part of the movable property, is obliged to submit an application to the court for recognition.

An application for recognition of the inheritance as escheated property may also be filed by the testator's creditor and if the inheritance includes agricultural land plots - by the owners or users of adjacent land plots. In such a case, the court involves the local government bodies at the location of the real estate included in the inheritance in the consideration of the case.

Removal from the right to inheritance:

- Persons who have intentionally taken the life of the testator or any of the possible heirs or have made an attempt on their life are not entitled to inherit. (These provisions do not apply to a person who has made such an attempt if the testator, knowing about it, nevertheless appointed him as his heir under the will).
- Persons who intentionally prevented the testator from making a will, making changes to it, or revoking the will and thereby contributed to the emergence of the right to inheritance for themselves or other persons or contributed to the increase in their share in the inheritance shall not have the right to inherit.
- Parents do not have the right to inherit by law after a child in respect of whom they have been deprived of parental rights and whose rights have not been renewed at the time of opening the inheritance.
- Parents (adoptive parents) and adult children (adopted), as well as other persons who evaded the obligation to support the testator, if this circumstance is established by the court, do not have the right to inherit by law.
- Persons whose marriage is invalid or has been declared invalid by a court decision do not have the right to inherit by law one after the other.
- If a marriage is declared invalid after the death of one of the spouses, the court may recognize the right of the other spouse, who survived him/her and did not know and could not have known about the obstacles to the registration of the marriage, to inherit the share of the deceased spouse in the property acquired by them during this marriage.
- By court decision, a person may be removed from the right to inherit by law if it is established that he or she evaded providing assistance to the testator, who was in a helpless state due to old age, serious illness, or disability.

These provisions apply to all heirs, including those entitled to a mandatory share in the inheritance, as well as to persons in whose favor a testamentary waiver has been made.

The heir's right to receive a certificate of inheritance:

An heir who has accepted the inheritance may receive a certificate of the right to inheritance. If several heirs have accepted the inheritance, a certificate of the right to inheritance is issued to each of them, specifying the name and shares in the inheritance of the other heirs. The absence of a certificate of the right to inheritance does not deprive the heir of the right to inheritance.

The heir's obligation to apply for a certificate of the right to inheritance:

An heir who has accepted an inheritance, which includes property and/or property rights that are encumbered, and/or real estate and other property that is subject to state registration, is obliged to apply to a notary or, in rural settlements, to an authorized official of the relevant local government body for the issuance of a certificate of the right to inheritance for such property.

If several heirs have accepted the inheritance, the certificate of the right to inheritance is issued in the name of each of them, indicating the name and share in the inheritance of the other heirs.

In addition to the application, the person must submit to the notary: documents confirming the fact of the death of the person after whom the inheritance was opened, the time and place of opening the inheritance, the presence of grounds for calling to the inheritance under the law of the persons who submitted an application for the issuance of a certificate, the composition of the inherited property for which a certificate of the right to inheritance is issued; evidence of the family and other relationships of the heirs with the testator; documents confirming that the inherited property actually belonged to the testator; documents confirming the fee for issuing a certificate of the right to inheritance.

Deadline for issuing a certificate of inheritance:

The certificate of the right to inheritance shall be issued to the heirs after the expiration of six months from the date of opening the inheritance. If the will is made in favor of a conceived but not yet born child, the issuance of the certificate of the right to inheritance and the distribution of the inheritance among all heirs may take place only after the birth of the child. The provisions of paragraph one of this part shall also apply to a child conceived during the testator's lifetime but born after his death, in the case of inheritance by law. Before the expiration of the term for accepting the inheritance, the notary may issue a permit to the heir to receive a part of the testator's deposit in a bank (financial institution), if this is caused by circumstances of significant importance.

A certificate of inheritance rights is issued for property that passes by inheritance to heirs or the state by a notary or, in rural settlements, by an official of a local government body performing notarial acts.

A certificate of the right to inheritance is issued at the place of opening of the inheritance, except for cases established by the Civil Code of Ukraine.

The certificate is issued within the time limits established by the civil legislation of Ukraine. A certificate of ownership of a share in the joint property of spouses in the event of the death of one of them is issued by a notary at the place of opening the inheritance, except for cases established by the Civil Code of Ukraine.

What if the deadline for accepting an inheritance is missed?

If you miss the deadline for accepting an inheritance, you can solve this problem in two ways:

1. if there are other heirs who have accepted the inheritance and they do not object to your entry into the inheritance, then with their written consent, you submit an application to the notary;
2. If other heirs object or there are none, the notary will refuse to register the inheritance. In this case, the term for accepting the inheritance will have to be extended in court. When applying to the court with an application, it is necessary to explain why the term was missed. The court extends the terms that were missed for good reasons.

If the emergence of a person's right to inherit depends on the non-acceptance of the inheritance or the refusal of other heirs to accept it, the period for the person to accept the inheritance shall be set at three months from the date of the non-acceptance of the inheritance or the refusal of other heirs to accept it. If the remaining period is less than three months, it shall be extended to three months.

What reasons for missing a deadline are considered valid?

- long-term illness that limits mobility;
- long-term business trip;
- being in places of deprivation of liberty;
- not knowing that a relative has died (for example, other relatives did not inform about it), and so on.

Please note: Not knowing that the application had to be submitted within 6 months is not considered as a valid reason! If the court extends the deadline for submitting the application, you submit the application together with a copy of the court decision to the notary. Then, the inheritance is registered in the general procedure.

State registration of the right to inheritance:

According to the Law of Ukraine "On State Registration of Real Rights to Real Estate and Their Encumbrances" the notary, as a special entity, on the day of issuing the certificate of inheritance rights to real estate, conducts state registration of rights in the State Register of Real Rights and enters information about the transfer of ownership rights to the name of the heir into the State Register of Real Rights to Real Estate.

Please note: The right of ownership of real estate arises for the heir from the moment of state registration of this property.

Making changes to the inheritance certificate:

With the consent of all heirs who have accepted the inheritance, a notary or an authorized official of the relevant local government body at the place of opening the inheritance may make changes to the certificate of the right to inheritance. At the request of one of the heirs, changes may be made to the certificate of the right to inheritance by a court decision. In the cases established by parts one and two of this article, the notary shall issue new certificates of the right to inheritance to the heirs.

Invalidation of a certificate of inheritance:

A certificate of the right to inheritance shall be declared invalid by a court decision if it is established that the person to whom it was issued did not have the right to inheritance, as well as in other cases established by law.

Please fin additional info in our YouTube video under link:

<https://www.youtube.com/watch?v=o2L2JilUeQ8&t=55s>

We hope that with this Memorandum we have highlighted for you – the main aspects of inheritance in Ukraine, the relevant procedures and legal details.

*Sincerely,
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