Succession

Eslováquia

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

Slovak law does not allow agreements on succession or joint wills.

There are several methods for drawing up wills:

1. A will written by the testator's own hand must contain his or her handwritten signature and the date. A will so written does not have to be signed by witnesses.

2. A will drawn up using a different method of writing (such as a computer, a typewriter, or by a person other than the testator) must be signed before two witnesses, who must sign the will to testify that the document is really an expression of the testator's last will. A will so drawn up must also contain the person's handwritten signature and the date.

3. A will in notarised form. The notary is responsible for the content-related and formal particulars of this type of will. Every notarised will must be registered in the Central Notary Register of Wills.

4. A special form of wills is used when the author of the will is in poor medical condition, cannot see or hear, or is unable to read or write. In such cases three witnesses must be present. They testify to the will by their signature after hearing it. The document must specify the person who has written it, the person who has read it aloud, and how it was confirmed that the document contains the testator's true will.

Only persons with legal capacity can be witnesses. Blind, deaf or mute persons, those who have no command of the language in which the will is expressed and the beneficiaries of the will may not be witnesses.

For a will to be valid it must indicate the day, month and year when it was drawn up. Naturally, an important part of the content is the designation of the beneficiaries who will inherit the estate as a whole, or proportional shares thereof, or specific items (who will receive what).

Where the will has been written in the testator's own hand, it is advisable for the testator to tell those close to him or her, so that they know where the will is deposited.

Any conditions attached to the will have no legal implications.

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

Notaries must register ex officio wills drawn up in the form of notarial records in the Central Notary Register of Wills, which is maintained by the Chamber of Notaries. Wills drawn up as described in points (1), (2) and (4) above do not have to be registered, but at the testator's or another person's request they can be accepted by a notary for safekeeping. The notary must also register such safekeeping in the Central Notary Register of Wills.

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

Yes, Section 479 of Act No 40/1964, the Civil Code (*Občiansky zákonník*) specifies the reserved shares of the estate and the beneficiaries entitled to them (who are referred to as 'forced heir', *neopomenuteľný dedič*): 'Minor descendants must receive at least as much as constitutes their share of the estate under the law and descendants of age must receive at least as much as one half of their share under the law. Where a will contradicts the above, the relevant part of the will is void, unless the specified descendants have been disinherited.'

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

Succession passes by operation of the law, by a will, or by both of these mechanisms. If the deceased has not drawn up a will or if assets exist that have not been included in the will, succession passes by operation of the law on the basis of classes of beneficiaries.

1st class

In the first class, the deceased's children and spouse are the beneficiaries in equal proportions. If a child does not inherit, that child's portion is distributed to this child's children in equal proportions. If even those children, or any of them, do not inherit, then their descendants inherit in equal proportions.

If the deceased has not left any descendants or his or her descendants do not inherit (i.e. all of them have refused succession, or none of them is capable of inheriting, or all of them have been validly disinherited or are not taken into consideration), the 2nd class of beneficiaries comes into play.

2nd class

If the deceased's descendants do not inherit, the beneficiaries in the second class include the spouse, the deceased's parents, and also anyone who lived with the deceased in a common household for at least one year before his or her death and who for that reason took care of the common household, or was dependent on the deceased for maintenance. Beneficiaries in the second class inherit in equal proportions; however, the spouse must always receive at least one half of the estate.

3rd class

If neither the spouse nor any of the parents inherit, the beneficiaries in the third class, inheriting in equal proportions, include the deceased's siblings and anyone who lived with the deceased in a common household for at least one year before his or her death and who for that reason took care of the common household, or was dependent on the deceased for maintenance. If any of the deceased's siblings does not inherit, the sibling's children receive the sibling's portion in equal proportions.

4th class

If no beneficiary inherits in the third class, the fourth class comprises the deceased's grandparents, who inherit in equal proportions, and if none of the grandparents inherits, the grandparents' children in equal proportions.

Where there is no beneficiary, the estate passes to the State by default.

5 What type of authority is competent:

5.1 in matters of succession?

The district court within whose jurisdiction the deceased had permanent residence at the time of death, or if the deceased did not have permanent residence in Slovakia, in whose jurisdiction the deceased had assets, and if there is no such court, then the court for where the deceased died. The district court appoints a notary to act and decide in the case. Acts by the notary are considered acts by the court. This authorisation does not extend to a decision to open

succession proceedings, nor to an application for the provision of legal assistance abroad, nor to a decision to dismiss the notary and the notary's staff, nor to a decision to overturn the decision on succession if it is subsequently found that the deceased is still living or that the declaration of the deceased's death has been retracted.

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

Beneficiaries make an oral declaration of acceptance or waiver of succession before the notary, or a written declaration that they send to the probate court within one month of the day when they were notified by the court of their right to waive/accept the succession and of the implications of the declaration.

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

Slovak law does not provide for legacies.

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

There is no special declaration of waiver or acceptance of a reserved share. The procedure is analogous to the declaration of acceptance/waiver of succession, but the one-month time limit is not applicable.

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)

The Registry Office notifies the competent district court of a death in its registry district. The court starts proceedings, even on its own motion, once it learns that somebody has died or has been declared dead. In the first place, the court checks in the Central Notary Register of Wills whether or not the deceased has left a will, a deed of disinheritance, a revocation of either of these two acts, or a statement on the choice of national law in accordance with separate legislation, and identifies the notary with whom the documents are deposited. The court carries out a preliminary investigation to identify the beneficiaries and the deceased's estate and debts, and takes any urgent measures needed to secure the succession. There is no need to order a hearing to consider the succession if the court confirms that a single beneficiary receives the estate or if the estate passes to the State by default.

If succession is not contested, as the authorised court commissioner the notary issues an order on succession in the following cases:

a single beneficiary receives the estate;

the estate passes to the State by default;

the beneficiaries have agreed with each other on distribution; any creditor of the deceased is also party to this agreement if the creditor's claim is part of the settlement;

the beneficiaries and the deceased's creditors have made an agreement to pass on excessively indebted estate for payment of the debts;

if the parties cannot reach an agreement, the notary confirms the share of the estate for each beneficiary or distributes the estate to the beneficiaries and decides what each beneficiary will receive;

the notary does not approve the agreement on the distribution of the estate and confirms the share of the estate for each beneficiary or distributes the estate to the beneficiaries and decides what each beneficiary will receive.

A final succession order is a document that effects the passage of title to the beneficiaries.

If the decision on succession rights depends on ascertaining disputed facts, and if conciliation fails, the court orders the beneficiary whose right seems less probable to bring an action for the determination of the disputed facts. The court also sets a time limit for bringing the action, which may not be shorter than one month.

Where the estate is excessively indebted and the beneficiaries and the deceased's creditors fail to reach an agreement to pass on the estate for payment of the debts, the court can order the winding-up of the estate. In the winding-up order, the court requests the creditors to notify it of their claims within a specified period; otherwise, the claims are forfeited.

The court (the notary as the court commissioner) winds up excessively indebted estates by selling all of the deceased's assets at the price customary for comparable property. In selling the assets, the court commissioner acts for the parties in his own name but takes into account any more advantageous suggestions by the parties for asset realisation. The notary deposits the proceeds from liquidation in a bank account that the notary has opened for this purpose. If some assets are left over, they pass to the State with effect from the day of the deceased's death.

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

Succession passes on the death of the deceased. The succession order or the court's order has only a declaratory effect regarding a fact that occurred in the past. However, it is only possible to dispose of the estate to the full extent with a final succession order or a court order.

The day of the deceased's death must be evidenced by a death certificate, a notification of death issued by a special registry of the Slovak Ministry of the Interior when a Slovak citizen dies abroad, or a court decision delivered in proceedings to declare a person dead in the case of missing persons, where the date of death is declared by the court. Only Slovak courts can declare Slovak citizens to be dead. Slovak courts can declare foreign nationals to be dead, but the legal implications only apply to persons permanently living in Slovakia and only to property situated in Slovakia.

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

Yes, beneficiaries are liable for the deceased's debts and for reasonable costs related to the deceased's funeral, but only up to the value of the estate passing to them. Beneficiaries are not obliged to pay the deceased's debts using their own assets. If there are several beneficiaries, they are responsible for the deceased's funeral and debts in accordance with the proportion that each received relative to the estate as whole. If the estate is excessively indebted, the beneficiaries may agree with the creditors to cede the estate to pay the debts. The court approves this agreement provided it is not in breach of the law or the accepted principles of morality.

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

The district authority where the immovable property is located is competent to register it in the land register. The district authority registers it on its own motion or in response to an application filed by the owner or another authorised person. An application for registration must be filed in writing and must include:

(a) the applicant's name (business name) and permanent residence (registered office);

(b) the name of the district authority to which the application is addressed;

(c) an authentic instrument or other document confirming the title to the immovable property;

(d) a list of annexes. The annexes to an application for registration are:

(i) an authentic instrument or other document confirming the title to the immovable property; if this concerns registering a lien established by the operation of law, a document confirming the existence of the claim need not be attached;

(ii) the identity of the plot, if the title to the immovable property is not recorded in the certificate of title;

(iii) other documents having evidentiary value for the proceedings.

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?

The appointment of an administrator is not mandatory. However, if required in the general interest or major interest of the parties, the court takes urgent measures on its own motion to secure the estate and can also appoint an administrator. Most frequently, one of the beneficiaries or another person close to the deceased is the administrator, but it can also be a notary other than the court commissioner in the succession proceedings in question.
An administrator appointed under Slovak law differs from the administrator under common law.

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

The notary appointed as the court commissioner executes the will. Beneficiaries manage the estate acquired by succession, but they need the court's permission for disposal of items included in the estate before the succession proceedings are closed, and for other acts beyond everyday management.

9.3 What powers does an administrator have?

During the succession proceedings the administrator takes any action needed to preserve the assets making up the estate within the limits determined by the court. The court determines the scope of his or her authorisation with a view to enabling the administrator to preserve the value of assets making up the estate. The administrator is liable for any damage he or she causes by a breach of the duties specified by law or the court. At the end of the succession proceedings he or she submits a final report to the beneficiaries and the court decides on his or her fee plus reimbursement of costs, which are payable by the beneficiary receiving the estate.

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?

At the end of the succession proceedings the notary issues a succession order, which is deemed to be a court order. The certificate contains the names of the beneficiaries and identifies the assets passing to each beneficiary and the portions of the estate.
At a beneficiary's request, the notary can issue a Certificate of the Group of Beneficiaries during the succession proceedings. This is a 'confirmation of facts known from the file', an authentic instrument issued by the notary conducting the succession, mainly for purposes of evidencing the status of a beneficiary or other entitled person to whom a right of the deceased is to pass (e.g. compensation under an insurance policy, membership rights, positions in pending proceedings, etc.).

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Last update: 03/01/2022
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