

Inheritance Proceedings in Croatia

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Which inheritance law applies?

When the deceased is a foreign citizen and owns a real estate in Croatia, proceedings for distribution of his property between the heirs must be held before the Croatian courts, due to its' exclusive competency in this matter. Substantive rules of law of the country of deceased's citizenship apply to the inheritance proceedings.

Foreign courts' decisions in the inheritance proceedings that are distributing real estate in Croatia are not recognized by Croatian courts. On the other hand, foreign courts' decisions on distribution of movable assets and/or money of the deceased may be recognized in Croatia in court proceedings for recognition of foreign courts' judgments. The question of whether at the time of death the deceased had or did not have residence in Croatia has no influence on applicable substantive inheritance law. Foreign property owners who are members of different nationalities, religions or foreigners who reside locally are in no way treated differently or do they come under different inheritance laws.

The inheritance proceedings in Croatia are handled in the following way:

Competent court for running the inheritance proceedings is a Municipal court of the deceased's residence (these are the first instance courts). In the case the deceased did not have residence in Croatia competent court is the Municipal court where the Land Registry for the property is maintained. In the last couple of years, according to new regulation made in order to speed up the inheritance proceedings, the Courts are, once the inheritance proceedings is instituted, transferring inheritance files to Notaries Public for the purposes of conducting inheritance proceedings. When conducting inheritances proceedings and issuing Inheritance Orders Notaries Public are acting as Courts commissioners. Inheritance proceedings usually take between 1- 6 months, mostly depending on cooperation of the heirs and completeness of the documentation. Notaries Public issue decision in inheritance proceedings only in case all parties agree and there are no disputed issues. In case there exists a discrepancy in the factual background, i.e. determination of heirs or property Notaries than turn over the file to the Courts to conclude the inheritance proceedings. The proceedings usually include 1-3 hearings on which the heirs give their statements and all necessary documentation is collected. Documentation mostly refers to the identity and ownership of the property and this stage may cause a bit delay depending on accuracy of data in the Land Registries. Other required documentation that needs to be collected is documentation that refers to proving heirs' relation with the deceased. This may prolong the proceedings in case of foreign heirs since their birth certificates must be presented in original and be properly notarized and legalized, usually by Apostille (according to Hague Convention of 5 October 1961 on Abolishing the Requirement on Legalization of Foreign Public Documents) and translated into Croatian by licensed court interpreter.

Different nationalities of spouses in no way affect the applicable law since the applicable law is determined exclusively with regard to the deceased.

The principal laws that apply to inheritance proceedings are: Inheritance Act, Law on Resolution of Conflict of Laws with the Provisions of Other Countries in Certain Matters (Act on Conflict of Laws Rules) and Ownership and Other Property Rights Act.

Reserved Portion

Croatian inheritance law is familiar with two types of heirs: so called “heirs by the law” and “heirs by the will”.

According to Croatian substantive inheritance law (when applicable) certain categories of “heirs by the law” are entitled to so called “reserved portion” in the case the testator has left a will.

“Reserved portion” applies to two categories of “heirs by the law”. In the first category are testator’s descendants (including adoptive descendants) and his spouse. They always inherit if they have applied for their “reserved portion” in the inheritance proceedings. Within the second category fall testator’s parents, adoptive parents and other ancestors. The latter category inherits the reserved portion only if they are permanently incapable to work and do not have support or necessary means for self-maintenance.

The reserved portion of the first category represents the $\frac{1}{2}$ of the part an heir would regularly inherit under the law, in case the testator left no will. This can easily be explained by one practical example.

For instance, if the deceased died without a will and has left three heirs that inherit in equal parts, his spouse and two children, each of them will inherit $\frac{1}{3}$ of his legacy. However, if the deceased left a will and left his entire legacy only to one of his children, according to the reserved portion rule his spouse and other child would be entitled to apply and obtain $\frac{1}{6}$ of his legacy each (being $\frac{1}{2}$ of $\frac{1}{3} = \frac{1}{6}$). The rest $\frac{4}{6}$ of his legacy remains to the child who inherits by the will.

The reserved portion of the second category equals to $\frac{1}{3}$ of the legacy they would normally inherit, if called for reserved portion. They would be called for legacy if there are no “heirs by the law” in any of the ranks above them.

In the absence of the will the entire estate goes to the “heirs by the law”, heirs determined by the law. Legal heirs are divided into several ranks and the next rank is called for legacy only in the case there are no representatives of the previous rank. The ranks and the persons entering certain rank are provided by the law. In the absence of any of the “heirs by the law” the estate then goes to the municipality where the real-estates are located.

The residue of the property may be freely divided by the will and there are no restrictions as to whom the residue of the estate may be willed to. Of course, if an heir who has a right to a reserved portion has inherited the same or more value than he is entitled to under the reserved portion rule, he may not call for his reserved portion right.

And lastly, testator's obligations i.e. debts must be paid from his estate, the heirs are jointly liable for the amount of testator's debts up to the value they have inherited.

The Will

Making a will in Croatia is something each individual decides upon himself and there are no rules in this respect. It is a strictly personal decision. Making a will enables the testator to determine his heirs but in no way affects the length of inheritance proceedings. The only reason for delay of inheritance proceedings when a testator has left a will would be when one of the interested parties would contest the will.

According to Croatian conflict of law rules a will is formally valid if it is made in accordance with one of the following laws:

- laws of the country where the will was made
- laws of the country of testator's citizenship at the time the will was made or at the time of his death
- laws of the country of testator's residence at the time the will was made or at the time of his death
- laws of the country of testator's sojourn at the time the will was made or at the time of his death
- laws of Republic of Croatia
- laws of the country where the real-estate is located (applicable only to real-estate)

Croatian Inheritance law is familiar with two main types of will. First type is a private will, a will that testator has written and signed by himself or the statement that he has given in writing before the two witnesses present. The other type is a public will given in the form of a minutes before the Municipal courts, Notaries Public or Embassies of Republic of Croatia.

In the case of intestacy where the Croatian law is applicable, heirs from the first inheritance rank would be called for inheritance i.e. testator's spouse and children, and in case there are no heirs of this rank heirs from the second rank would be called and so on.

During the life of the property owner

The property may be given freely by the owner to anyone prior to his death and there are no restrictions on such gifts.

However, gifts made at any time to any of the "heirs by the law" or gifts made to third persons in the last year of his life, may be challenged after death of the property owner

in case that gifting caused the heirs with separate portion right to be left without their separate portion.

Problems of inheritance

Croatian law looks primarily at title deeds i.e. registered property with the Land Registry. Anyone contesting deeds may challenge title deeds ownership within the separate litigation. For the duration of this litigation and if the result of litigation may influence the outcome of inheritance proceedings, inheritance proceeding are interrupted and Inheritance order reserved till the final judgment in litigation is reached.

Ownership of property between spouses is regulated by the laws of the country of their citizenship. If the spouses are citizens of different countries the law of their common or last common residence applies to their ownership of the property. If applicable law can not be determined on the basis of what is stated above only than Croatian law applies.

According to Croatian laws spouses are co-owners in equal shares of all the property that was acquired during the marriage, apart from the property spouses inherited or received as a gift, regardless who has the title on property in the Land Registry. However, if the spouse is not registered as the co-owner of the property in the Land Registry and heirs are challenging spouse's co-ownership, the spouse must initiate litigation proceedings and obtain judgment on ownership for determination of the co-ownership. The same rule on interruption of inheritance proceedings, as stated above, applies in this case.

In cases when the property or part of it goes on death to a child or children not of legal age or to others not legally adult, they are appointed a guardian. A guardian is usually their guardian by law, i.e. a parent for a child, except when a parent is also the heir in which case it is considered that a conflict of interest exists and than a Center for Social Welfare appoints a guardian, usually an attorney at law.

All stated above refers to the cases where there exists a factual reciprocity in acquiring real-estate between citizens of Croatia and the country of heirs' citizenship.

In case the heir cannot, by law, own a property in Croatia due to non existent reciprocal property-owning rights, the heir is compensated by the State for the value of the property. Regardless of the existence of reciprocal property-owning rights there are certain categories of property that, according to special laws, may not be owned by foreigners. Under this category of property fall in for example forests. The State compensates the value of the property to foreign inheritors of such property.

Other issues

Inheritance tax on inherited property amounts to 5% of commercial value of the property.

Certain categories of heirs are exempted from paying the inheritance tax. Deceased's spouse, direct blood relatives (descendants and ascendants) as well as his adopters and adoptees are exempted form paying the title deeds. At the same time his brothers and sisters, their descendants as well as his sons-in-law and daughters-in-law are exempted

from paying the inheritance tax if they have lived in the same household with the deceased at the time of his death.