

The Legal Rights and Significance of Heirs Who Receive a Mandatory Share

Bekniyazova Dinora Bayniyazovna

Independent student of the Higher School of Judges

Abstract

the significance of the mandatory contribution, the list of heirs receiving the mandatory contribution and their rights

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Introduction

We know that in the legislation of our state, succession is carried out in two forms, namely, by will and by law. In succession according to the law, if the fate of the entire inherited property is not determined, that is, there is no will, as well as in other cases, succession according to the law is carried out.

In succession according to a will, it follows from the result of the heir bequeathing any property or right in relation to it that belongs to him. The testator wishes to bequeath his property to heirs personally selected by him or to individuals or legal entities who are not heirs or to the state in the content of the will. The heir to whom a will is left receives the property of inheritance through this will without any encumbrances. However, our legislation specifies the composition of citizens who receive a mandatory share, and it is stated that they receive their due share regardless of the availability of a will.

According to Article 1142 of the Civil Code of the Republic of Uzbekistan, the minor or incapacitated children of the heritor, including adopted children, as well as the incapacitated spouse and parents, including those who adopted him, regardless of the content of the will, inherit at least half of the share (compulsory share) due to each of them when they become heirs according to the law. Based on the requirement of this law, each notary, when opening a probate case, must determine the composition of heirs other than the heir specified in the will and determine whether there are heirs who receive an obligatory share in the process of determining. If available, he is obliged to summon them to the inheritance case. Paragraph 26 of the "Administrative Regulations on the Issue of Certificates of Inheritance by Notaries," approved by the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated November 18, 2020, No. 726, provides that the list of disabled persons includes

women who have reached the age of 55 on the day of the opening of the inheritance, men who have reached the age of 60, and persons recognized as having disability of the 1st or 2nd group on the day of the opening of the inheritance in accordance with the established procedure.

Persons acquiring an obligatory share shall have the right to receive their obligatory shares, regardless of the availability of a will. Also, the testator has the right to receive his mandatory share, even if he excludes the legal heirs from the inheritance, if he has the right to receive the mandatory share.

When determining the composition of recipients of mandatory shares, heirs by law and heirs deprived of the right to inherit shall also be taken into account.

At the time of succession by will, the heirs receiving the inheritance by will in most cases oppose the heirs receiving the mandatory share in the acquisition of their shares. In this case, the notary explains the content and rules of the will. The reason is that when drawing up a will, the requirement of Article 1142 of the Civil Code of the Republic of Uzbekistan is explained to the text of the will. If the heir, the recipient of the will, objects to the actions of the notary, the notary explains that he will appeal to the court.

Persons receiving mandatory shares have the right to receive their mandatory shares, regardless of the content of the will. The heir, who receives an obligatory share, shall recover his share from the property of unwilling inheritance, and if the unwilling part of the property of the inheritance is insufficient, then the share from the part of the will shall be satisfied. Our legislation stipulates that the mandatory share is at least half of the share due to each of the heirs according to the law.

Mandatory share is a circumstance that restricts the will and its execution, in which the testator may leave a will freely describing the fate of his property, but heirs who are not mentioned in the will at all or who are excluded from the inheritance may also have the property to be bequeathed. In practice, this situation often leads to resistance from heirs. However, from a logical point of view, since the will can be left not only to the heirs, other persons, legal entities, and the state, the fate of the heirs who lived with the testator and born from him (heirs necessary for others) is considered. However, these circumstances lead to a feeling of dissatisfaction among the heirs. The reason is that in most cases, in practice, according to the will of the testator, a will is left to the heir who lived with him and nursed him. However, there are many disputes arising as a result of the mandatory right to a share of the heirs of the testator who are of retirement age and do not live with him. These circumstances are stated in Part 4 of Article 1149 of the Civil Code of the Russian Federation. According to it, if the heir mentioned in the will used the bequeathed property or used it as the main source of livelihood (equipment, creative workshop, etc.), but the heir receiving the mandatory share did not use this property while the bequeather was alive, the court may reduce or reject the share of the heir receiving the mandatory share.⁴ In this case, it is important that the facts in the sheep are taken into account. According to it, if the heir to the will used the property bequeathed while the bequeather was alive; and the heir receiving the mandatory share did not use this property, and also if the refusal of the share does not harm his property status; if the property (life) of the heir to the will is damaged, the court may reduce or refuse the mandatory share taking into account these circumstances.

The aforementioned situation is logically correct, as each property, the rights of the owner, and the rights of the true heirs of the inherited property should be protected by law. The mandatory share must be given if it is actually needed and its life depends on this share. And I think it would be fair to identify and normalize these cases in relation to other heirs.

This share of the persons receiving the mandatory share belongs only to them. Their shares do not pass to his heirs. The reason is that this share is only a personal right that belongs to the heir who receives this mandatory share.

Citizens who receive a mandatory share can not only receive this share, but also refuse it. In this case, the heir writes before the notary an application for refusal of the mandatory share and is formalized by the notary. This application is interpreted as a waiver of the inheritor's mandatory share, not in favor of anyone.

In the above, I conclude that the rights of persons who receive a mandatory share are specified in the law. The rights of the heirs who receive this share, the size of the shares, the right to accept the share or the right to refuse are explained. The mandatory share is included as a separate article in our legislation, because wills can be left not only to legal heirs, other persons (physical and legal) or for the benefit of the state, it is recognized and included as necessary to serve to ensure the rights of legal heirs, at least the rights of heirs in need of protection. However, the interpretation of the fate of these shares depending on the situation in many cases creates problems in practice among the heirs. Therefore, based on the study of foreign experience, it is necessary to establish a procedure for obtaining a mandatory share, as in all cases, the heir may not need to receive the mandatory share. The law should clearly state the requirements of the situation. It would be advisable to study and implement in practice norms such as in which case the mandatory share will be reduced or canceled, and in which case the mandatory share will be granted.

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