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# GREEK LAW DIGEST

## The Official Guide to Greek Law

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## A.S. Papadimitriou & Partners Law Firm

ENFORCEMENT OF DOMESTIC JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

WILLS AND ESTATES DISPUTES

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# ASPECTS OF GREEK CIVIL LAW

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# WILLS AND ESTATES DISPUTES

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## On which grounds can a will be contested?

A. A will is ***wholly or partially void from the beginning*** in case:

- the formalities provided by the law for the drafting of a will have not been observed,
- it was made by an incapable person,
- it is contrary to the law or to morality,
- it is not seriously intended but was only made apparently,
- it was made in favour of a person non determined to such extent that his identification becomes impossible,
- its validity is dependent on the opinion of another person or
- it was made without *animus testandi*.

B. A will ***becomes wholly or partially void*** if:

- it was revoked,
- three months have lapsed since the special circumstances, justifying the making of an extraordinary will, ceased to exist,
- the heir renounced the succession or was pronounced disqualified or
- it was voidable and has been annulled by the court.

C. A will is ***voidable and subject to annulment by a court*** in case:

- it resulted from a threat exerted illegally or contrary to morality,
- it resulted from a fraud, without which the testator would not have made the disposition,
- the testator was in error concerning the identity of the person he wished to designate or the thing he intended to give,
- it was prompted by an erroneous motivation stated in the will and referring to the past, present or future without which motivation the testator would not have made the disposition,
- the disposition in favour of a spouse is in case of doubt subject to annulment where the marriage between the two spouses is null or was dissolved during the lifetime of the testator or if the testator relying on a justified ground of divorce had commenced against his spouse a legal action for divorce or
- if the testator omitted a forced heir, whose existence was not known to the testator at the time he drew up the will or who was born or became forced heir subsequently to the drawing up of the will. Annulment is excluded if there is evidence that the testator would have proceeded with the making of the will even if he had knowledge of the actual situation.

## How can I contest a void will?

A will that is or becomes null is deemed not to have been made. A void will produces no legal effects and need not to be judicially declared void. However, anyone with an interest doing so, may file an action requesting that the court declares that the will is void.

## How can I request the annulment of a voidable will?

The annulment of a voidable will may be requested solely by a person who would profit directly from the annulment and in case of an omission of a forced heir only by such forced heir. The right to file an action requesting the annulment of a voidable will is prescribed two years after the publication of the will. It is supported that in case of minors, such deadline is suspended until he/she reaches majority.

## What if there is a "no contest" clause *(clausula cassatoriae)* in the will?

A non contest clause is a clause in a will which provides that an heir will forfeit the estate conferred to him by the will if he/she challenges the will. Such clause is generally valid unless it is contrary to the law or the morality. However, such clause does not deprive an heir of his/her right to request the annulment of the will. If the will and the "no contest" clause are found valid by the court, the heir who contested shall forfeit the estate conferred to him by such will. Naturally, if the will is annulled, such clause will also be annulled and will be void.

## What is a certificate of succession *("klironomitirio")* and how can I contest it in case of inaccuracy?

The certificate of succession is a certificate issued by the court following a request of an heir or the other persons provided by the law, which confirms the right of inheritance and the portion attributable to an heir. Where there are several heirs a common certificate of succession is delivered at the request of any of them. A person who is qualified as an heir on the certificate of succession is deemed to have the right of inheritance referred to therein. A legal transaction entered into a person indicated as an heir in the certificate of succession with a third party is valid for the benefit of the third party except if the third party was aware of the inaccuracy of the certificate of succession or of its revocation by a court judgment.

A true heir or an executor of a will may demand from the person holding an inaccurate certificate of succession to hand it back to the competent court. The true heir may also request from the person holding a inaccurate certificate information on the condition of the estate and the fate of its objects.

If the court finds that a certificate of succession delivered is inaccurate, the court shall order its withdrawal. Upon withdrawal the certificate loses its validity. If the withdrawal is not immediately possible, the court shall declare its invalidity by a court judgment, a summary of which is published in the manner provided by the law.

Note should be made that by virtue of Regulation (EU) No 650/2012 (the *"EU Succession Regulation"*) which applies to all Member States, save for Denmark, Ireland and UK with regards to the succession of persons that pass away after August 17, 2015., a European Certificate of Succession is introduced for the scope of enabling heirs, legatees, executors of wills and administrators of the estate to prove their status and exercise their rights or pow-

ers in other EU countries. Once issued by the competent court, the European Certificate of Succession is recognized in all EU countries without any other procedure being required.

## What if nothing has been provided for me in the Will?

A testator may generally disinherit any person other than the forced heirs, which can be excluded from the estate only on certain grounds determined by the law. Forced heirs are certain close relatives of the decedent which cannot be excluded from the estate and more particularly the descendants, the surviving spouse and the parents of a decedent. If there are descendants, the parents can be excluded from the estate. A forced heir is entitled to inherit a minimum percentage in the estate, which is half of the share the forced heir would receive according to intestate succession (the "*compulsory share*").

A testator may deprive a *descendant* of his compulsory share in the estate for certain reasons provided by the law and more particularly if the latter: i) has made an attempt on the life of the testator, his spouse or another descendant, ii) has become willfully caused guilty bodily injuries to the testator or the other parent, iii) was convicted to a crime or a serious intentional misdemeanor against the testator or his spouse, iv) maliciously neglected his obligation to furnish alimony to the testator, v) leads an immoral or dishonest life contrary to the testator's will at the time of death of the testator. A testator may disinherit *his parent* for one of the above under (i), (iii) and (iv) reasons. A testator may also disinherit his *spouse* if the latter became guilty of fault by reason of which the testator had the right at the time of his death to commence divorce proceedings. The ground for disinheritance of the above persons must exist at the time of execution of the will and be specifically mentioned therein. A pardon that has intervened subsequently to the disposal providing for disinheritance renders the disinheritance inoperative. In addition to the above, a testator may disinherit his descendent if the latter leads a prodigal life or is overburdened with debts. In such a case, the testator should provide either that the compulsory share of such descendant is devolved on the descendants of such descendants or that an executor is entrusted with the administrator of such compulsory share or that both measures are taken.

Any testamentary dispositions against the above rules are null and void and produce no legal effects. The forced heir may therefore file an action requesting that the court acknowledges such invalidity. Moreover, if the other heirs refuse to give the forced heir his compulsory share, such forced heir shall have the right to file an action claiming his hereditary portion ("*agwgi peri klirou*").

## How can I claim my compulsory share if the testator donated the estate to third persons prior to his death?

The determination of a compulsory share is made on the basis of the condition and value of the estate at the time of demise of the principal after deduction of the debts, the funeral expenses and the expenses relating to the inventory of the estate. To the above net assets of the estate are added all assets donated to the forced heir as well as any assets donated by the principal during the last ten years of his life except if the donation was made by reasons of decency or by a special moral duty.

In case the estate does not suffice to cover a compulsory share, the beneficiary of such compulsory portion or his successors may file an action against the donee or his heirs for the

rescission of the donation to the extent of the part missing from the compulsory share. The right to file such lawsuit is prescribed two years after the demise of the principal.

## What can I do if someone refuses to deliver to me my portion on the estate?

A heir has the right to claim from any person retaining things belonging to the estate in the capacity as heir, namely a person infringing his right to the inheritance by retaining the estate, an acknowledgment of his right on the inheritance and the restitution of the estate or of particular assets thereof.

The above claim is prescribed within twenty years from the time of infringement of the right. In case the estate includes real properties, the lawsuit should be registered in the land registries of the district of such real properties. Note is made that the above claim cannot be heard if the claimant does not submit to the court a certificate of the competent tax authority proving that he has filed an inheritance tax declaration for his portion on the estate.

## My cousin and I inherited are co- heirs of an estate but we disagree on its transfer to third party buyers and on several matters regarding its administration. What can I do?

Where there are several heirs, the estate constitutes their common property. All co-heirs are jointly and severally liable for the debts of the estate in proportion to each portion. Any co-heir is free to sell its portion on the estate but in case of sale an asset of the estate, the relevant decision should be taken unanimously. Decisions concerning the orderly management and exploitation of the common thing, such as for example the lease of a property, save for those involving a substantial alteration of or a disproportionately expensive addition may be taken by the heir/s having the majority of shares in the estate.

In case of disagreement, any co-heir may ask for the distribution of the estate. Such distribution may be effected by an agreement between the heirs or, in case an agreement on the terms of distribution cannot be reached, by a court judgment following a legal action of any co-heir against all other co-heirs.

## Can I bring a claim against the executor of a will?

A testator may appoint by his will one or more persons as executors of the estate. The task of the executor is the implementation of the testamentary dispositions. An executor may perform any act that it is expressly stated in the will or is necessary for the testamentary dispositions. The executor of a will is liable in regard to the heirs for any fault during the administrator of the estate. The executor is also obliged to render an account to their heirs. If the executor refuses to act so, any heir may bring a legal action requesting the rendering of such account.

## Have the Greek Courts jurisdiction to hear my claim?

According to Greek Law, disputes relating to the recognition of an inheritance right or distribution of an estate, claims of an heir against the possessor or holder of an estate, claims arising from legacies or donations *mortis causa or* forced heirship and claims against an executor of with regards to the implementation of the provisions of a will come under the jurisdiction of the court of the last domicile of the deceased and if the deceased had no domicile, the court of his residence. The same court has jurisdiction for two years following

demise to hear claims between the heirs until the distribution of the estate, claims of third persons relating to debts of the deceased or the estate as well as rights in rem regarding movable assets not coming under the claims of the preceding paragraph.

According to Greek case law, Greek courts also have jurisdiction to hear a claim even the deceased had no domicile or residence in Greece, as long as the claim regards recognition of an inheritance right on real property located in Greece.

Note is made that according to the EU Succession Regulation, Greek courts have also jurisdiction to rule on the succession of a deceased that had his habitual residence at the time of death in Greece or if the litigants agree that Greek courts have exclusive jurisdiction to rule on the succession of a deceased that had chosen Greek Law as the law governing his succession.

Moreover, Greek courts have jurisdiction to hear a case of succession involving assets in Greece even if the habitual residence of the deceased at the time of death was not Greece, in case the deceased did not have the habitual residence at the time of death in any other Member State but did have his habitual residence in Greece during the last five years from the time the court is seized. If no court in a Member State has jurisdiction pursuant to the above, Greek courts shall nevertheless have jurisdiction to rule on assets located in Greece.

Finally, where no court of a Member State has jurisdiction pursuant to the provisions of the EU Regulation, Greek courts may, on an exceptional basis, rule on the succession if proceedings cannot reasonably be brought or conducted or would be impossible in a third State with which the case is closely connected provided that the case has a sufficient connection with Greece.

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