

Opportunities of notarization of the right to inherit property

Establishment and improvement of contemporary law system is one of the main rules of development in our country's legal government that is constantly advancing on the path to independence.

According to Article 15 of Chapter II of the Constitution, which is our Basic Law and defines the principles of the state, economic development in the Republic of Azerbaijan serves to increase the welfare of people on the basis of different types of property.

The new Civil Code, which came into force in 2000, sets the task of legally ensuring civil turnover, supporting entrepreneurship and creating conditions for the development of a free market economy.

Adhering to the concept of legal government created by nationwide leader Heydar Aliyev, in recent years, as a result of the political will and initiative of President Ilham Aliyev, modern legislative system has been founded, and there appeared wide opportunities for social and economic development.

Legal system of the Republic of Azerbaijan comply with the Continental European legal system and is included to the Roman-German law family. In this legal system, social relations are regulated by the laws that have been written and published beforehand. Therefore, goal of the legislation is that the law responds to new challenges of life.

One of the main supports of the continental European legal system is the provision of a high level of legitimacy in public relations by giving preference to written evidence.

As in other countries, the notary, who creates and presents written evidence to turnover has undergone a high stage of development in Azerbaijan. This system has become an irreplaceable guarantor of the rule of law in a market economy. It is not a secret that, notary's reputation in the society is constantly increasing. Thus, the notary is one of the main legal instruments to ensure freedom and stability of civil turnover.

Reforms made in notarial system and application of "Electronic notary" information system has increased the quality of notarial acts, as well as enabled to provide flexible and quality services to citizens. Thus, "Electronic notary" information system has integrated to other information systems, as a result, it provided to obtain and use the information and documents required to carry out notarial acts in real time mode.

According to Article 29 of the Constitution, each person has a property right: "No type of property is preferred. Property right, as well as private property right is protected by the law. Each person may own movable and immovable property. Property right includes the rights to own, use and dispose of property solely or together with others. "

According to 7th part of the same Article of the Basic Law, the government provides a right to inherit.

As can be seen, it has been identified by the Basic Law that property right is one of the main rights of human, as well as it is possible to own movable and immovable property and the government provides the right to inherit.

The owner's rights to own, use and dispose of his/her property, including real estate, may not be restricted, except as provided by law.

According to Article 135 of the Civil Code, properties may be movable and immovable: Lands, subsoil areas, reservoirs, forests, perennial plantings, buildings, devices and other things that are firmly attached to the ground (inseparable from it), objects that cannot be relocated without disproportionate damage to their destination are immovable things. Land areas and things that are firmly attached to the ground (inseparable from it) are single immovable things and single property objects.

Property right to real estate is obtained in different ways. One of these ways is inheritance. In this regard, notarial actions consist of an in-depth analysis of a fairly significant and complex legal relationship and the implementation of appropriate regulation and approval of the inheritance case.

The inheritance relations are mainly regulated by the Civil Code. 10th section of the Code (Articles 1133-1325) is dedicated to inheritance right. According to Article 1133 titled as “The concept of inheritance”, the property of the deceased (testator) is transferred to other persons (heirs) by operation of law or by will or on both grounds.

Inheritance by operation of law (transfer of the property of deceased to the persons determined by law) comes into force, when testator does not leave a will, or his/her will is invalid in whole or in part.

According to Article 1134 titled “Heirs” of the Civil Code of the Republic of Azerbaijan, heirs by operation of law may be the persons who were alive at the moment of testator’s death, as well as children born after testator’s death: “Heirs by will may be the persons who were alive at the moment of testator’s deaths, as well as the persons who were conceived during the life of testator and children born after testator’s death, not depending on whether they are his/her children or not, and whether they are legal entities or not”.

When a notary issues a certificate of right to inheritance by operation of law, a notary identifies the circle of heirs by taking into consideration the degree of relationship of heirs identified by Article 1159 of the Civil Code of the Republic of Azerbaijan.

“Electronic notary” information system of the Ministry of Justice of the Republic of Azerbaijan plays significant technical and executive role in solution of inheritance cases. Thus, the following information on inheritance right is obtained through this system in real time mode: place and territorial affiliation of the inheritance, circle of heirs, whether the inheritance case was opened in another notary office or not, the testator's will and its validity, approved applications of heirs who accepted or refused to accept the inheritance, etc.

Application of “Electronic notary” information system increased the quality of notarial acts, enabled to provide flexible and quality services to citizens, ensured the legality of notarial documents.

Through this system, a notary obtains a certificate on description of real estate, officially registered rights and restriction (encumbrance) of these rights from state registry in real time mode, as a result, citizens get free from the concerns of obtaining the document.

According to Article 57 of the “Notary Law” of the Republic of Azerbaijan, a notary of a place of inheritance shall issue a certificate of right to inherit the property obtained by inheritance to heirs within the periods established by the civil law.

Article 1246 of the Civil Code of the Republic of Azerbaijan regulates the period of accepting inheritance. According to the article “the heir may accept inheritance within three months from the date he/she knew or should have known that he/she was called to inherit. Acceptance of the inheritance is not allowed after six months from the date of opening of the inheritance”.

The inheritance shall be deemed accepted by the heir when the heir gives an application to accept the inheritance at the notary office or actually begins to own or manage the property, thus demonstrates clearly that he/she has accepted the inheritance.

When the heir actually begins to own a part of the inheritance, it is considered that he/she has accepted the inheritance completely, regardless of how the inheritance is expressed and where it is located.

But how do these inherited rights pass by inheritance if they die without state registration of their inherited property rights? It should be noted that, according to Article 1151.1 of the Civil Code, inheritance (inherited property) includes a set of property rights (inherited assets) and obligations (inherited liabilities) owned by the testator until the moment of death.

The testator's property rights are included in the inheritance, regardless of whether they are registered or not. Failure to formalize these rights does not justify their loss. For the reason that these rights are fully transferred to the heir, the process of registration is carried out on the basis of the heir's application to the institution.

According to Article 22.2 of the Law of the Republic of Azerbaijan on “State registry of real estate”, and in accordance with the agreement or other grounds, if a person who obtained property or other proprietary rights on real estate, dies without obtaining the deed certifying this right, his/her heir by operation of law or by will obtains a certificate issued by registration authority confirming that the right belongs to the deceased. The deed on state registration of rights is titled in the name of heir who issued inheritance documents on the basis of the certificate.

An heir who obtained a document identifying the right to real estate issued by Territorial Department of Real Estate State Registry Service, receives an inheritance certificate by issuing the document to a notary. This certificate is the basis for issuing a deed in the name of the heir.

Accepting inheritance in time is considered an important condition of the right to inherit. In case the inheritance is not accepted in time, inheritance right is terminated and the inheritance right is obtained by the heir who has completely accepted it (Article 1273-1 of the Civil Code). Therefore it is not enough to be an heir in order to obtain inheritance. An heir shall express his/her will for acceptance of inheritance within six months from the day of opening of inheritance.

If an heir does not accept the inheritance and remains silent, he/she loses the right to inherit.

It should be noted that, an heir may write an application on refusal of accepting inheritance at the notary within the period considered for acceptance of inheritance. An heir who applies to a notary should know that by issuing an application on refusal of accepting inheritance, his/her right to inherit a share from inheritance is terminated and the application may not be taken back.

A notary issues a certificate on the right to inherit real estate to all heirs by their written application on accepting inheritance or to each individually depending on their wishes.

When issuing a certificate on right to inherit real estate by operation of will, a notary checks the range of persons entitled to a compulsory share in the inheritance. According to Article 1193 of the Civil Code of the Republic of Azerbaijan testator's children, parents and wife (husband) has a compulsory share in inheritance not depending on the context of the will. This share must consist of a half (compulsory share) of the share that should be given to him/her during the inheritance by operation of law.

While drafting a certificate on inheritance, a notary indicates appropriate information in the text of certificate on the property's total area (residential and auxiliary areas, number of living rooms), address, a share (part) from common ownership that belonged the deceased, a document certifying ownership right of a testator, a certificate (date, registration number etc.) confirming whether the property is encumbered or not, as well as appropriate information on non-residential and land areas.

Certificate on right to inherit real estate is issued to heirs after six months from the date the inheritance is opened.

In recent years, notarization of inheritance rights has become more convenient, easier and faster as a result of improving the legal framework and electronic capabilities in this area.

In conclusion, I would like to note that the notarization of inheritance rights provides a comprehensive guarantee for the indisputable establishment of rights to inherited property.

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