

Changes in the Law of Succession

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■ A number of changes were made to the law of succession after the Civil Code Amendment of April 2, 2009 took effect June 28. What prompted the changes?

The previous provisions concerning the circle of lawful successors were commonly criticized. The circle of legal successors was too limited; it only included the intestate's spouse, descendants, parents, siblings and the siblings' descendants. More distant relations were excluded from lawful inheritance, as a result of which in the absence of the spouse or relatives specified by the law's provisions, the local commune or the state were entitled to inheritance despite the fact that, for example, there were surviving intestate grandparents who were often emotionally attached to the intestate. These solutions proved to be inappropriate and insufficient and did not serve well the purposes of the law of succession. They met with justifiable criticism since these provisions insufficiently protected constitutional inheritance law and did not take into consideration the good of the family, sometimes even leading to consequences that were perceived as contradictory to the sense of justice.

■ Specifically, what kind of changes were made?

The main change was extending the circle of lawful successors by adding to this group grandparents as well as their descendants in certain circumstances and stepchildren. There was also a change made to the order of inheritance with regard to parents and siblings. It seems obvious that parents should inherit prior to siblings, therefore this change was implemented. This rightful provision is justified by the fact that parents are usually aged, which decreases their earning chances and what is more, in the case of the death of the child they cannot rely on the child's support in the future. Also, they often contributed to the child acquiring property through their efforts to educate the child. These provisions enter into force only if



there are no descendants of the child who can and want to enter into an inheritance.

There is also a provision according to which the mother inherits everything what would be inherited by both parents in the absence of established paternity of the intestate's father. However, if one of the parents dies prior to starting the probate process, the intestate's share is inherited in equal shares by the siblings. If one of the siblings dies prior to starting the probate process, that share is inherited by his/her children.

A new element embraced by the legislator is the introduction of the intestate's grandparents and descendants as lawful inheritors who receive inheritance only in the absence of a spouse, descendants, parents, siblings and siblings' descendants. In other words, if on the day of starting the probate process, i.e. on the day of the intestate's death, any of the lawful successors is still surviving, the grandparents will not enter into inheritance. However, if it comes to the grandparents' inheritance due to the absence of other successors, their shares of the inheritance are the same. If in such a situation one of the grandparents dies prior to starting probate inheritance, his/ her share is inherited in equal shares by his/her children. It can be observed that as a consequence of changes in the law of succession the circle of inheritors is expanded in some circumstances to include the siblings of the intestate's parents and their descendants.

Another new provision that was not known in Polish law before is the intro-

duction of the intestate's stepchildren to the circle of lawful successors, however, under certain conditions: first, in the absence of any other relatives entitled to lawful inheritance; second, neither of the stepchild's parents is surviving. The legislators placed stepchildren in the circle of those entitled to inheritance ahead of the local commune or the state, which is in accordance with the sense of justice.

Due to extending the circle of lawful successors, lawful inheritance by local communes or the state was moved further, which is in accordance with the suggestions of the Constitutional Tribunal, which declared that the transfer of the deceased person's property in favor of the state or local commune is possible only if it is not possible to determine the legal persons whose right to inheritance is more justified by these persons' close relationship with the deceased. It must also be noted that inheritance provisions should be closely connected with the protection of property law.

■ What are the advantages of the implemented changes?

Undoubtedly, these changes help strengthen family ties and also encourage activity in life and business with a view to leaving a lasting legacy. The new regulations also give a sense of conformity with the rules of social coexistence. However, these provisions enter into effect only if the intestate has not made a will since the intestate within his/her lifetime can freely dispose of his property through the will.

■ How will the implemented changes impact companies?

Generally, the law of succession deals directly with corporate bodies, however, it also influences them indirectly in the case of death of a company's owner or shareholder. Extending the circle of lawful successors also influences their situation. It will certainly limit significantly the transfer of the intestate's property components to the state or a local community if there are surviving family members who previously were not regarded as lawful successors. This is of great importance in the case of family companies run for several generations. This is positive from the perspective of social interest because it makes it possible to continue using an intestate's property amassed through the efforts of several generations in a given family.