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# Certain Issues Of Protecting The Rights Of Absent Heirs In Inheritance Law

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**ABSTRACT**

This article analyzes current issues of protecting the rights of absent heirs in inheritance law. The author thoroughly examined the necessity of preserving inheritance property after the opening of inheritance and the legal problems arising in this process.

The research highlights practical difficulties through studying the role of notaries in preserving inheritance property, its inventory, and ensuring the interests of heirs. Special cases such as heirs with unknown place of residence, unborn heirs, and enterprise inheritance are particularly examined.

The article conducts a comparative analysis with foreign experience, particularly with US inheritance law. By comparing the legislation of the Russian Federation with the norms of the Civil Code of Uzbekistan, ways for more effective protection of absent heirs' rights are proposed. In conclusion, the author presented specific proposals for necessary additions to the legislation.

**KEYWORDS:** Absent heirs, preservation of inheritance property, notarial activity, term for acceptance of inheritance, inventory of inheritance property, conservation of inheritance property, unborn heir, enterprise inheritance, inheritance division, US inheritance law, Russian inheritance legislation, legal protection mechanisms.

After the opening of an inheritance, the need arises to protect the inherited property. This, in turn, imposes responsibilities not only on the subjects interested in exercising their rights but also on the notarial authorities.

The Instruction on the Procedure for Performing Notarial Actions by Notaries provides rules regarding the protection of inherited property. However, in practice, it is often difficult to fully comply with the requirements set forth in this instruction. For example, after the death of the testator, heirs may continue living in the house. In some cases, even after several decades, no actions are taken to formalize inheritance rights.

The Instruction contains norms regulating the handling of all types of property included in the inheritance during notarial activities. Nevertheless, it should be noted that working with each type of property has its own specific features.

O.V. Koptyagina raises an important practical issue related to the preparation of the inventory of inherited property, particularly when it concerns an enterprise as a whole. Such cases in practice give rise to a number of legal application problems. Therefore, it is necessary to develop a regulatory document that would comprehensively regulate notarial procedures for protecting such types of property.

Indeed, there is a need for a special legislative act regulating the legal status of enterprises left as inheritance, since the current Civil Code does not sufficiently cover the peculiarities of enterprise inheritance. This is due to the complexity of enterprise property (including tangible assets, intellectual property, and contractual obligations), the heirs' potential lack of competence in managing the enterprise, possible disputes among them, and the difficulties faced by notaries and courts in resolving such matters.

Turning to foreign experience, it is impossible to speak of inheritance acceptance procedures in the United States in the same way as in continental law countries. Methods such as submitting an application to a notary or performing certain actions to accept the inheritance in practice are not typical for the United States, as it follows its own specific procedure for settling estates. Therefore, issues related to the protection of inherited property in the U.S. should be viewed through the prism of "estate administration," carried out by a special person appointed to manage the estate.

In most U.S. states, the protection of inherited property is carried out under court supervision. In some states (for example, Washington and Texas), the testator may indicate in the will that certain actions (such as the sale of movable or immovable property) can be performed without prior court approval.

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In the Republic of Uzbekistan, a notary undertakes the necessary measures such as determining the place where the inheritance was opened, notifying the heirs, and verifying the documents confirming the death. Official documents such as the death certificate, the death record, and certificates containing a QR code are verified through the "Unified Electronic Archive of Civil Registry Offices" information system, and the results are stored in the system. The notary ensures that initial measures for the protection of the inherited property have been taken, confirms that the premises are sealed, determines who possesses the keys, and informs the interested parties about the process of property registration.

When selecting a custodian for the inherited property, the notary must take into account the opinions of the heirs or other applicants. If the property is entrusted to one of the heirs for safekeeping, the custody agreement is gratuitous; however, other heirs are obliged to reimburse the custodian for the expenses associated with preserving the property. Although the law does not provide specific guidance on this matter, an heir who keeps the property has the right to use it. This situation often occurs when there are both present and absent heirs, and measures for the protection of the property are taken upon the request of an absent heir.

If the present heir lived with the testator until his death and jointly used the property, he or she cannot be deprived of the right to use this property when it is entrusted to them for safekeeping. A contract for the safekeeping of inherited property with a third party is also considered legitimate. The unique aspect of such a contract lies in the fact that the depositor is not the owner of the property or their authorized representative, but rather the notary acting by virtue of law.

According to L.Yu. Mikheeva, a distinctive feature of this type of safekeeping agreement is that the notary acts as the depositor, while the custodian returns the item to the heirs once they have obtained ownership rights.

The process of registering inherited property is strictly regulated and requires the voluntary consent of the heirs or other individuals who lived together with the testator. If these individuals object to the registration of the property, the notary draws up an official statement indicating the refusal to present the property for registration and immediately notifies the heirs of the situation. In such cases, the heirs are informed of their right to file a claim with the court or to request the registration of the property through judicial procedures in order to secure their claim.

If, during an on-site inspection for registration, the property is found to be missing or has been removed by the heirs or other individuals, the notary prepares an official record stating that the property is absent or has been taken away, and explains to the interested parties their right to appeal to law enforcement authorities.

Some authors believe that all potential heirs—"those called to inherit, those who have accepted the inheritance, as well as all possible heirs under the will and by law (including those in subsequent lines of succession), and additionally appointed heirs"—may participate in the registration of inherited property. However, such a conclusion appears incorrect, since only those who are officially called to inherit are recognized as heirs. All other individuals are only potential heirs who do not yet possess inheritance rights, and it is uncertain whether they will acquire such rights in the future. Their participation would only complicate the registration procedure of the inherited property.

According to Article 1151 of the Civil Code, if there are heirs whose whereabouts are unknown, other heirs, the executor of the will (the estate manager), and the notary are obliged to take the necessary measures to locate them and ensure their inclusion in the inheritance process.

If the whereabouts of an absent heir who has been called to inherit are determined, and that heir has not refused the inheritance, the other heirs must inform them of their intentions regarding the distribution of the inheritance. If the absent heir does not notify the others of their wish to participate in the inheritance distribution agreement within three months of receiving the notice, the remaining heirs have the right to allocate the share belonging to the absent heir and proceed with the division of the inheritance based on mutual agreement.

If the whereabouts of an absent heir are not determined within one year from the date the inheritance is opened, and there is no information indicating that the heir has renounced the inheritance, the remaining heirs have the right to carry out the distribution in accordance with the provisions of the second part of this article.

If there is an unborn but conceived heir entitled to the inheritance, the division of the estate may only take place after the birth of this individual. If the unborn heir is born alive, the other heirs may distribute the

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inheritance only after allocating the appropriate share to that heir. To protect the interests of the newborn child, a representative of the guardianship and trusteeship authority must be present during the distribution process.

The Civil Code of the Russian Federation does not contain a specific provision similar to Article 1151 of the Civil Code of Uzbekistan. In Russian inheritance law, relations concerning an absent heir are regulated through the following legal mechanisms:

Firstly, Article 1171 of the Civil Code ("Protection and Management of the Inherited Property") establishes the measures taken by a notary to preserve the inherited property, but it does not impose an obligation to search for the absent heir.

Secondly, Article 1172 of the Civil Code ("Measures for the Protection of the Inherited Property") regulates the procedure for registering and safeguarding the inherited property but does not set specific time limits or procedures for absent heirs.

Thirdly, Article 1165 of the Civil Code of the Russian Federation ("Division of the Inherited Property by Agreement among Heirs") governs the process of distributing the inheritance but does not provide separate guarantees for the rights of absent heirs.

Fourthly, the Civil Code does not specify three-month or one-year deadlines for absent heirs, nor does it require their compulsory search or notification. Therefore, within the inheritance law system of the Russian Federation, the rights of absent heirs are protected through general inheritance law provisions and notarial practice.

In our opinion, the Civil Code should include the following addition:

**"Article 1151¹. Period for Accepting Inheritance"**

The inheritance may be accepted within six months from the date it is opened.

If the inheritance is opened on the presumed date of a citizen's death, it may be accepted within six months from the date on which the court decision declaring the person deceased enters into legal force.

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