

WHAT HAPPENS WHEN A WILL IS CHALLENGED DUE TO LACK OF TESTAMENTARY CAPACITY?

January 2022

When talking about Wills the first thing that comes to our mind is death; surely an unpleasant topic, however it would be wiser for an individual to draft his/her inheritance by a way of Will before the individual dies. Drafting a Will is important when you want your wishes to be met.

Sometimes lawyers and legal counsel may face cases where the individual appears to be not of sound of mind and are challenged through Court to prove that the Will is invalid due to the fact the individual was incapable of making decisions in regards to his/her assets.

Non compos mentis is a term used when an individual is not of a sound mind. In reference to Wills, it has to be duly proven that the individual lacked the mental ability to understand the content and consequences of what he/she was signing when making a Will.

Cyprus's Succession Law regime relates to the Administration of Estates Law, CAP. 189 and also the Wills and Succession Law, CAP. 195. When we refer to an estate, we mean all the movable and immovable property an individual may owe during his/her lifetime. In order for the Inheritance and Succession Law to apply, the deceased must be domiciled in Cyprus during the time of his/her death based on the Forced Heirship regime. Despite the fact of domicile, Cyprus law may be applied in the case where immovable property is situated in Cyprus - irrespective of the fact whether the deceased lived abroad, their

nationality or where his/her permanent residence is. In reference to Article 42 of Cap. 195, domicile matters in regards to movable property, if an individual has his/her domicile outside Cyprus but has movable assets in Cyprus, then it's up to his/her discretion when making the Will to choose if he/she wishes to be subject by the laws of their country or under Cyprus Law.

In reference to Article 6 of Cap. 195, an individual's domicile can relate to the individual's origin or it can be acquired by an individual's domicile of choice [Christakis Michael Christopoulou vs Maria Marianthi Christopoulou [1971] 1 CLR 437].

A Will may sometimes be challenged at Court by one of the heirs in making an assertion and state that the deceased during the drafting of the Will was of no sound mind.

What differentiates the Administration of Estate from a grant of Probate, is the fact that an administration of estates is necessary when the deceased has left no Will. Respectively, a probate is necessary when the deceased has left a valid Will, meaning that his/her estate shall be distributed according to his/her wishes contained in the Will.

In cases where there is no Will in place, the rules of intestacy are applicable. The rules of intestacy provide for different classes of relatives who are accustomed to a certain percentage of the deceased's estate depending on their degree of kinship.

It is a fact that, a Will may sometimes be challenged at Court by one of the heirs in making an assertion and state that the deceased during the drafting of the Will was of no sound mind. It might become even more complicated when the individual - who makes the assertion - is not even a family member of the deceased. This can be proven by prescriptions of psychiatric medication or any records the individual had during the time of making the will proving that he/she was not of sound mind or was residing at a psychiatric facility or was under a medical examination. Evidence is thus needed to prove that the person making the Will fully understood what he/she signed, was not under pressure and did not lack any knowledge of the content of the Will.

A Will is deemed to be valid if it is witnessed in the presence of 2 (two) witnesses. However, if the Will consists of more than one page, the testator (meaning the individual who makes and executes his/her last will) and the witnesses should add their initials at the bottom of each page. The witnesses should be above the age of 18 years old and be of a sound mind. A Will can be revoked at any time during the individual's lifetime only when shown that the individual had the ability to make a valid Will.

To conclude, an individual making a Will should be of sound mind not having any mental disorder, for a Will to be proven valid.

The purpose of this article is to provide a general guideline on the subject and not to be considered, in any way, as legal advice. It is advisable to seek professional and legal advice on this subject before proceeding with any general information provided to you. For further clarifications and advice please contact us at legal@economideslegal.com.

Cathy Georgiou, LL.B.

Advocate

cathy.georgiou@economideslegal.com