

Inheritance Law In Germany - How To Obtain A Certificate Of Inheritance In Germany

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Pursuant to § 1922 BGB (German Civil Code) the heirs become owners of the decedent's estate upon his death (principle of "universal succession"). As succession to the estate occurs automatically by operation of law and the executor or trustee of an estate, as envisioned in Anglo-American law, is basically unknown to German law it is often necessary to prove the heir's right of inheritance, especially when immovable property is part of the estate. Basically this is why the heir generally applies for a certificate of inheritance ("Erbschein").

The certificate of inheritance states the identity of the heir and his respective share in the estate (§ 2353 BGB) as well as any limitations to the heir's power of disposition over the estate, which may result from the ties on preliminary and subsequent heirship (§2363 BGB) or from the appointment of an executor (§ 2364 BGB). Pursuant to § 2365 BGB, it is presumed that the person identified as heir in the certificate of inheritance has the right of inheritance stated therein and is not subject to limitations other than those stated. Furthermore, § 2366 BGB protects those who acquire an item belonging to the estate from the person named as heir in the certificate of inheritance in good faith. They obtain title even though the transferor is not the true heir, unless they had knowledge of the inaccuracy of the certificate.

Pursuant to §2353 BGB, the heir may apply for the issuance of a certificate of inheritance to the probate court ("Nachlassgericht"). This court is usually located at the last residence of the decedent. If the decedent was German citizen and had no residence in Germany when he died, the probate court in Berlin – Schönefeld is competent to issue the certificate of inheritance.

A certificate of inheritance will only be issued to the heir and not to beneficiaries of a testamentary bequest ("Vermächtnis") or the entitled person to a statutory forced share ("Pflichtteil").

For the issuance of the Erbschein, it is mandatory that at least one of the heirs - under special circumstances also the executor or the trustee as named in an Anglo-American will - applies for the certificate of inheritance.

The application may be filed with the probate court, a German notary ("Notar") or through the German Consulate. The applicant usually applies in the name and on behalf of all heirs.

The application must be in German. All documents proving the right to inherit (e. g. last will, letters testamentary, death certificates, birth certificates, marriage certificates etc.) must be translated to German. Furthermore the heir must declare in lieu of oath that he is unaware of any rights of other parties that may be in conflict with the alleged entitlement to the inheritance (see sample "Antrag Erbschein").

After having received the application, the Nachlassgericht will issue the Erbschein and forward it to the person named as recipient in the application. Attorney J-H. Frank is partner of the German law firm Wiens Frank & Parnter, specialising in international inheritance and probate law.

For more information click <http://www.wf-kanzlei.de/index.php?id=60&L=1>