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DIGITALIZATION OF NOTARIAL ACTIVITY IN THE FIELD OF
INHERITANCE

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Abstract

The cultural and scientific potential of a state also depends on what measures it takes to protect the rights of creators of cultural values and scientific achievements. In the Russian Federation, the bodies whose activities are primarily aimed at protecting the rights and legitimate interests of citizens and legal entities are notaries. The state of security of the rights of individuals, legal entities and the state as a whole will largely depend on how well a particular notarial action will be performed. This is the social significance of the notary's human rights activities. The widespread development of technical means has led to fundamental changes in the organization of modern document management. Digital technologies have transformed the notaries from one of the most conservative to a promising legal institution. The activity of a modern notary is aimed at minimizing the participation of applicants in the procedures for collecting preliminary materials and preparing the final notarial document. Today the field of inheritance is no exception. At the same time, the activities of notaries in collecting information necessary for registration of inheritance rights, continues to become more and more digital. In order to better implement the notary's human rights function, the features of performing notarial actions in the field of inheritance by remote means should be reflected in the relevant legislation, which requires its improvement and bringing it into line with the time requirements.

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Keywords: Digital notary, digital technologies, electronic notary, notary, unified information system of the notary



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1. Introduction

In the 21st century, under the influence of modern digital technologies, part of public relations is moving to the virtual space. In this connection, de Balzac's description of the notary as a short, fat, well-fed man, dressed in black, self-confident, almost always prim and instructive can hardly be considered appropriate (De Balzac, 1960).

Notaries, as Tarasova (2019) correctly emphasizes, are among the last in the Russian legal system to reach the introduction of information technologies. Nevertheless, they fully cope with the task assigned to them to provide comprehensive assistance to persons who have applied for a notarial act.

Digital technologies have transformed the notaries from one of the most conservative to a promising legal institution. Federal law No. 379-FZ of 21.12.2013 "On amendments to certain legislative acts of the Russian Federation" became the starting point for the transfer of notaries to electronic rails. The law also established new opportunities and powers related to the use of information and communication technologies - the Chapter of UP.1 "The Unified Information System of Notaries" was introduced. The Unified Information System of notaries is an automated information system owned by the Federal Notarial Chamber (which is also the operator of the Unified Information System of Notaries) and designed for complex automation of the processes of collecting and processing information about notarial activities and ensuring all types of information interaction (exchange).

Basic principles of construction and operation of the Unified Information System of Notaries, information interaction in the formation and use of included in the system information resources defined in the Provision on single information system of notaries approved by the Board of the FNP (Federal Notarial Chamber) of Russia in 2018. The unified information system of the notaries, on the one hand, acts as a reliable storage for each notarized document, and on the other hand, it serves as a unique high-tech tool that changes the nature of all notarial activities. Public online services of notaries: notifications registry of movable property pledge; the service of warrants control and a search server of probate cases successfully operate on the basis of the information registries of the Unified Information System.

2. Problem Statement

As a subject of research, the author selected digitalization in the system of notary activities in the Russian Federation in cases of inheritance. Digital technologies are rapidly penetrating all spheres of society, including the sphere of notaries. We should study how the notary interacts with government agencies and other organizations in order to exchange information. It is necessary to identify the positive aspects of using the latest information technologies. To do this, it is important to consider the historical aspect of the formation of theoretical foundations and legislation on the digitalization of notaries in the field of inheritance. It is necessary to give a detailed description of the digital systems operating in the notary system. The subject of the research is the norms of the current national legislation, as well as the corresponding scientific doctrine.

3. Research Questions

In accordance with the purpose of the study, the author raised the following questions. How is the exchange of information between the notary and various state bodies, as well as organizations within the framework of inheritance registration? How can the types of information exchange be grouped? What notary services are publicly available, and what information can be provided to heirs? Who is granted with the full access to the will? What are the advantages of digital notary systems? What will be the next steps in digitalization of notarial activities in the field of inheritance?

4. Purpose of the Study

The purpose of the research is to study the issue of notary activity digitalization. Notarial activities is an independent legal institution that performs the most important function in the field of inheritance. A comprehensive study of the current state of the Institute of the Russian notaries and identification of the essence of digitalization of the notaries allows giving an objective assessment of changes in legislation. The purpose of the study is also to identify the essence of individual elements of the legal status of a notary as the basis of legal regulation. The study of digitization of the notary's activities also affects other areas of public administration, the procedure for exchanging information. The introduction of new technologies makes it possible to simplify and speed up the inheritance process. By studying the sequence of digitalization of notaries' activity, it is possible to determine further ways of development and globalization of the notaries.

5. Research Methods

General scientific and private scientific methods of cognition are the basis of this research. Dialectical and system-structural methods, which made it possible to study digitalization of notary's activity in inheritance in the form of a system, were of particular importance among general scientific methods of cognition. From private scientific methods of cognition, the author actively used methods of comparative law and theoretical modeling. A special role is given to the comparative legal method. Special legal methods of cognition were used. In particular, the historical and legal method was used to study the evolution of digitalization of notaries' activity. Method of systematic interpretation of legal norms - when identifying the features of the notary's actions.

6. Findings

Since January 1, 2018, the final transition to electronic document management has been made (100% of all notarial actions are registered in electronic form), which allows for prompt verification of legally significant information, prevent fraudulent actions with notarial documents and, as a result, stabilize civil turnover (Lagodina, 2019).

One of the components of the notaries' unified information system is the unified register of wills and inheritance cases (certification, cancellation of wills, opening of inheritance cases). Introduction of information about notarial actions performed, in particular about the certification of wills, is made

immediately after its registration. Information about opening an inheritance in the register of inheritance cases is entered no later than 24 working hours after receiving applications. The activity of a modern notary is aimed at minimizing the participation of applicants in the procedures for collecting preliminary materials and preparing the final notarial document. Today the field of inheritance is no exception. At the same time, the activities of notaries in collecting information necessary for registration of inheritance rights, continues to become more and more digital. Thus, within the interagency electronic interaction system notaries can carry out a rapid information exchange with Federal Taxation Service, Rosreestr, the Central Bank of Russia, the Ministry of Internal Affairs of the Russian Federation, Federal Bailiffs Service, the Ministry of Foreign Affairs of the Russian Federation, Civil registration, etc.

As part of the system of interdepartmental electronic interaction, a notary has the right/obligation to request the following information in electronic format for the purposes of inheritance registration:

- for the purposes of determining the circle of heirs, information from the Unified State Register of registration certificate (Order of the Federal Tax Service of Russia dated 15.01.2018 No. MMV-7-6/5@ "On creation of the federal state information system for maintaining the Unified State Register of registration certificate");
- for the purpose of checking the fact of ownership of real estate by the testator on the day of death, information from the Unified State Register of real estate (item 14 of article 62 of Federal law No. 218-FZ of 13.07.2015 "On state registration of real estate");
- for the purpose of checking information about the testator's ownership of a share in the authorized and/or share capital of a company and/or partnership, a share in a production or consumer cooperative, information from the Unified State Register of legal entities (item 9 of article 6 of Federal law No. 129-FZ of 08.08.2001 "On state registration of legal entities and individual entrepreneurs"), etc.
- to establish the existence of the testator's deposit or account in a bank or other credit organization, information from the credit organization (article 26 of Federal law No. 395-1 of 02.12.1990 "On banks and banking activities"), etc.

In turn, the notary to the tax authority should send certificates of inheritance in electronic form via the Unified Information System of the notaries no later than five days from the date of the notarial act (item 4 of article 5 of the Fundamentals of the legislation of the Russian Federation on notaries).

The unified information system has also become a reliable platform for the development of free public notaries' services. In 2020, a new service was added to the public registers of the Federal Notarial Chamber - the search service for inheritance cases. Today, heirs can track the opening of an inheritance case in a special notarial database, which allows them to quickly find out which notary has the case and when it was opened. Public services help to ensure maximum reliability of the primary document on the basis of which the right arises and block the possibility of fraudulent actions. The unified electronic system was developed in full compliance with all the conditions that guarantee the secrecy of the will. It is the need to preserve the secrecy of the will that excludes the transfer of information about the contents of the document to the register.

According to the general rule, only legal heirs can read the will and check the information about the existence of a will in the register only after the death of the testator. But only a notary who conducts an inheritance case, in accordance with the Procedure for Notaries Working with the Registers of the Unified

Information System of the Notary, can get all the information about the testator's wills with its scanned images from the register of notarial actions Unified Information System (Federal Notarial Chamber letter of 30.05.2016 No. 1853/03-16-3). To do this, the notary should specify the details of the inheritance case from the register of inheritance cases of the Unified Information System: full name of the testator, date of death, number and date of the death certificate.

It should be emphasized that the Unified Information System has been functioning only since July 1, 2014 and, accordingly, it is not a fact that it contains all information about wills certified before the specified time. In this regard, the notary who opened the inheritance case, when presented to him by the heirs of a will that is not included in the Unified Information System of Notaries, will have to send it to the notary who certified the will, in order to determine its authenticity. It seems that the Federal Notarial Chamber should continue to work on forming a complete database of wills ever made in Russia.

The advantages of the electronic system and the unified register of wills and inheritance cases include mobility and speed (data search takes no more than one minute), accuracy (notary errors that occurred due to the duality of the testator's orders are excluded), security (the introduction of the Unified Information System of Notaries significantly reduced the statistics of crimes with inherited property).

One of the phenomena of modern society is the active migration of the population, and therefore, the number of inheritance cases involving a foreign element objectively continues to increase. However, the doctrine of private international law does not agree on the concept of a heritable statute. Legislators of different countries also only determine the composition of the heritable statute, while the heritable statute under the legislation of the Russian Federation differs significantly from that under the legislation of other states. In different legal systems, the volume of heirs' rights to property, the procedure for exercising and ways to protect inheritance rights are determined differently. And, if the contentious-law, some substantive and procedural issues of inheritance in the CIS countries are defined in the Minsk Convention On legal assistance and legal relations in civil, family and criminal matters (concluded in Minsk 22.01.1993), then the issues of searching for wills issued in other countries are either defined in bilateral agreements, or remain open at all.

On the one hand, the establishment of a register of wills in the Unified Information System by the Federal Notarial Chamber today almost fully corresponds to the main provisions of the convention providing a uniform law on the form of international will of October 26, 1973 (concluded at Washington, 26.10.1973) which participant is the Russian Federation as the legal successor of the USSR. On the other hand, Russia is not a party to the Basel Convention on the Establishment of a Scheme of Registration of Wills (ETS N 77), which regulates the procedure for obtaining information from similar national registers of other states that have joined the convention, which creates inconveniences in the conduct of inheritance cases complicated by a foreign element.

It follows that the problems of determining the law that is to be applied in each specific case have to be solved by the notary conducting the inheritance case. It is logical to determine the issues of obtaining information from the national registers of wills and inheritance cases at the legislative level. In particular, the accession of the Russian Federation to the Basel Convention would simplify the work of a notary, save money and time for heirs, and facilitate the most accurate execution of the last will of the testator.

The Federal Notarial Chamber, pursuant to the provisions of Federal law No. 480-FZ of 27.12.2019 "On amendments to the fundamentals of the legislation of the Russian Federation on notaries and certain legislative acts of the Russian Federation", continues to work on digitalization of notarial activities, develops and creates infrastructure for introducing remote actions into civil circulation, including in the field of inheritance. The new ones include the creation of a "no-visit" inheritance service, which not only guarantees citizens the protection of their rights, but also the convenience and time savings. In the context of quarantine measures during with the COVID-19 pandemic, it can become the only possible solution to all issues related to inheritance registration. In the legal literature, concerns are expressed about the "electronic identification of a person" that will be necessary for obtaining notarial services remotely. It is concluded that it is necessary to limit the case of performing notarial actions without personal presence (Skachkova et al., 2019). Kurchinskaya-Grasso (2020) agrees with this position, pointing out that digitalization of notarial services will not solve the problem of personal identification. It is also suggested that excessive digitalization of the notaries, and the technologies used will not allow to fully implement such principles of the civilised process as freedom of will of the parties, autonomy of the will, etc. (Akhrameeva, 2020).

7. Conclusion

In the modern digital turnover, which is gradually entering all spheres of life, it is necessary to involve a legal intermediary who has the necessary digital knowledge. Such a person must have certain public legal functions. Its task should be to give legitimacy to actions performed in digital circulation, and ensure the protection of citizens' rights. The objective need to improve the format of digital interaction between notaries and citizens, organizations and authorities is the key to new decisions of the Federal Notarial Chamber, which develops and implements all digital initiatives exclusively at the expense of the notaries' own funds, without subsidies from the state or municipal budgets. It is obvious that the number of notarial actions performed using digital technologies will grow. Notaries can and should become highly qualified operators of the distributed registry system, key figures of the digital economy of the future. For this reason, it is important not only to improve skills in the field of law, but also in the field of the modern technologies.

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