ИССЛЕДОВАТЕЛЬСКАЯ СТАТЬЯ

Проблемные вопросы при проведении инвентаризации и составлении описи наследственного имущества

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Аннотация: В статье анализируется значение для гражданского оборота такого нотариального действия, как принятие мер к охране наследственного имущества: составление описи части наследственного имущества по указанию наследников. Автор исследует аспекты обращения за составлением описи единственного наследника, проблематику передачи на хранение в банк валютных ценностей, драгоценных металлов и камней, изделий из них и не требующих управления ценных бумаг, обращается к процедуре составления акта описи и обоснованию количества составляемых экземпляров, что будет иметь практическое значение при обращении за принятием охранительных мер. В статье рассматриваются спорные ситуации, возникающие в сфере наследственного права: банкротство наследодателя, частичная опись наследства, оформление выморочного имущества.

Основной упор в работе сделан на частноправовом характере регулирования отношений, возникающих между участниками гражданского оборота, что дает основания упростить регулирование и совершать данные нотариальные действия в случае обращения заинтересованных лиц. Даны рекомендации для обеспечения сохранности движимого и недвижимого наследства на государственном уровне.

Ключевые слова: меры к охране наследственного имущества, нотариус, охрана наследства, опись наследственного имущества, наследственное имущество, права наследников

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Challenges associated with inventorying and compiling an inventory of inherited property

RESEARCH ARTICLE

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Abstract: The article explores how notarial actions, specifically conducting an inventory of inherited property at the request of heirs, affect the protection of inherited property. The author explores the different aspects of compiling an inventory for the sole heir, focusing on the challenges associated with transferring monetary assets, precious metals and gemstones, and securities that do not require management to a bank for safekeeping. Additionally, the author addresses the procedure for drafting the inventory documents and justifies the necessity of creating multiple copies, emphasizing their practical relevance in seeking protective measures. The article discusses controversial situations arising in the field of inheritance law: bankruptcy of the testator, partial inventory of inheritance, execution of escheat property.

The work primarily discusses the private law aspects of regulating the relations developing between participants in civil turnover, providing justification for streamlining the regulation and making these notarial acts available to interested parties upon their request. Recommendations are made to ensure the preservation of movable and immovable inheritance at the state level.

Keywords: protection measures for inherited property, notary, protection of inheritance, inventory of inherited property, inherited property, rights of heirs

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Introduction

Due to the necessity of recording all inherited movable property belonging to the testator, heirs and notaries have not been motivated to compile a list of inherited assets thus far.

The Methodological Commission of the Federal Chamber of Notaries consented to our suggestion that the law does not require a notary to list the whole estate and that the notary may only compile an inventory of a part of the inherited assets based on the directions of the legal heirs[1]. If the Methodological recommendations on the execution of inheritance rights are amended[2] (hereinafter – the recommendations), there will be more notarial actions aimed at securing inheritance property and listing the inventory. In this regard, it is essential to review the arguments supporting a shift in inventorying methodology and analyze some of the challenges and suggested amendments.

We should mention that for the regulatory instruments to function, the issue of incorporating amendments into federal legislation will not be the subject of this study.

Inherited property and legal disputes

We will consider the statistics[3] of notaries implementing measures to protect inherited property (inventory of inherited property) for 2011–2022 (**Figure 1**):

We will also analyze the statistics of court disputes according to the data of the Judicial Department under the Supreme Court of the Russian Federation (courts of general jurisdiction of first instance)[4] **(Figure 2)**:

The above statistics show that there are about 50,000 claims for acceptance of inheritance and recognition of ownership of assets considered by the courts of first instance per year. Additionally, we see an increase in applications for dividing the inherited property.

E.Yu. Petrov[5] stresses the importance of protective measures in modern inheritance law due to a «common occurrence of opposing heirs' groups despoiling the movable part of the inheritance, and a lack of developed inventory practices». Consequently, we need an effective mechanism to guarantee the safeguarding of inheritance at the state level.

Figure 1. Measures to protect inherited property, 2011–2022

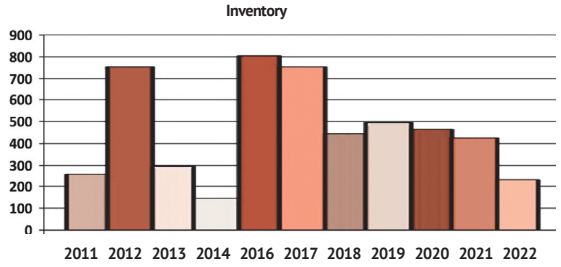
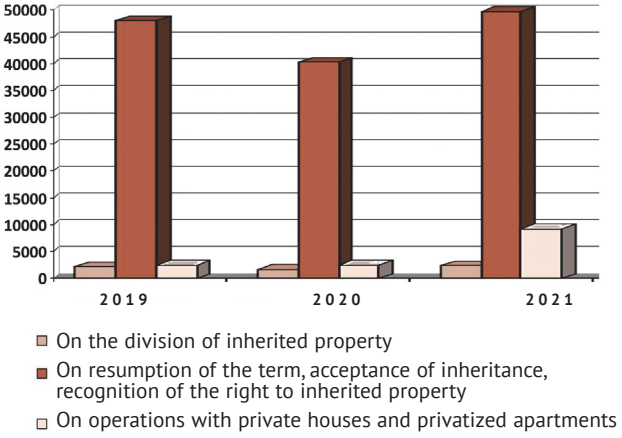


Figure 2. Court disputes



In 2022, notaries compiled 234 inventories, including bank deposit box inventories.

Notaries use guidelines that follow the provisions of the Instruction on the Procedure for Notarial Actions by State Notary Offices of the RSFSR of January 6, 1987, to compile inventories of inherited property. These guidelines were in effect both before and after the adoption of the Fundamentals of Legislation of the Russian Federation on Notaries[6] and have been in force since April 26, 1999.

According to part 4.4 of the Recommendations, the notary should record all property available at the place of inventory. When the individuals entitled to be present during the inventory of inherited property agree that the property has no value due to wear and tear, they may apply to have it excluded from the inventory. The inheritance practice is evolving, but the Recommendations still prohibit describing separate items at the direction of applicants.

If the heirs make a request to the notary to describe only a portion of the property, such as art, luxury items, antiques, furniture, and high-value household appliances, and there is no disagreement among the heirs regarding the scope of the property to be described, the

1 Protocol of the meeting of the FCN's Methodological Commission on April 3, 2023.

2 Methodological Recommendations on the execution of inheritance rights (approved by Decision of the FCN Board of March 25, 2019, protocol No. 03/19)

3 https://minjust.gov.ru/ru/pages/svedeniya-o-notariate-v-rossijskoj-federacii-za-2022-god

4 http://www.cdep.ru/index.php?id=79&item=6120

5 Inheritance law: article-by-article commentary to articles 1110–1185, 1224 of the Civil Code of the Russian Federation [Electronic edition. Revision 1.0] / Edited by E.Yu. Petrov. Moscow: M-Logos, 2018. P. 462–463

6 Fundamentals of Legislation of the Russian Federation of February 11, 1993, No. 4462-I. URL: http://www.kremlin.ru/acts/bank/3047

notary may list the most valuable items without providing a detailed description of the property that has no value to the heirs.

State as heir

According to P. V. Krasheninnikov[7], presently, the State is not a privileged heir. The current version of the Civil Code of the Russian Federation assumes eight succession orders, i.e., property is practically always inherited and transferred to citizens.

Inherited movable property does not have to be taxed and, therefore, is not of any concern to the government from a taxation perspective. From the point of view of taxation, it is of no interest to the state.

In all cases of registering escheat property as the state's property, the government inherits money deposits and real estate; requests to notaries of executive bodies of state power to inventory movable property in the testator's place of residence are absent.

It's worth noting that the state may have an interest in the inheritance of movable property when it comes to verifying that both the testator and heirs are following federal laws on preventing the laundering of criminal proceeds and financing of terrorism.

In 2021, the City of Moscow acquired more than 500 apartments as escheat property, with 400 in 2020 and 334 in 2019. In earlier years, the city inherited 150 housing units per year[8]. In the context of inheritance cases initiated by the Property Department following the passing of individuals without any heirs, the notary may inquire about the deceased's bank accounts and, if there are any funds, transfer them to the treasury of the Russian Federation. The testator's movable property found in the residence of the testator shall be recycled. To streamline the process of accounting, preserving, and selling residential properties that are inherited by the City of Moscow, management organizations must oversee the technical condition of vacant residential buildings in the City of Moscow housing stock due to citizens' departure and carry out necessary repairs to prepare the premises for occupancy.

As a rule, management companies recycle the testator's movable property within the testator's premises when carrying out repair work and preparing for occupancy. If a historical weapon or any property that holds historical, scientific, artistic, or cultural significance is discovered at a residency, the notary is responsible for safeguarding the inherited property according to the Article 1171 of the Civil Code of the Russian Federation, if there is a request from the local government.

Creditor and bankruptcy disputes

Creditors do not participate in the inventory of inheritance property; however, they can make a claim at any time by attaching such a claim to the inheritance file. According to the law[9], creditors must wait for six months, which is specified by the law, for the registration of inheritance rights to expire. After that, they are allowed to make their claims against the heirs through appeals or court proceedings. And only after this step they can become acquainted with the contents of the inheritance estate.

We should mention the existence of a legal prohibition to create an inventory in case the notary finds information about the testator's declaration of bankruptcy and bankruptcy proceedings against the testator.

Since 2018, the time limit[10] for taking measures to protect and manage the inheritance has been changed. The notary determines the duration of measures based on the nature, value, and time needed for heirs to take ownership. If the inventory process extends beyond six months and if third-party access to the premises is not allowed while the property is secured, the listing procedure can be performed periodically, and the time required to describe valuable items can be extended. Under the new legislative change, the inventory can be prepared after the six months period, which provides ample time to identify the list of heirs. Afterward, the consent of each heir can be obtained, and a detailed inventory list can be created, thus eliminating the possibility of any missing heirs.

Inventory practices

In the Soviet era, when a notary was tasked with creating an inventory of inherited property, they were required to describe *every* single item. If any of the items were found to be of no value due to wear and tear, the notary had the right to exclude them from the inventory act, with the consent of the heirs or the financial authority (when heirs were absent) and pass them for disposal under a separate act.

Currently, the heirs would not have a request for such a detailed inventory of the property; a thorough list seems redundant and not required by the heirs.

According to the author's experience and the data collected by the Federal Chamber of Notaries questionnaire in November 2022, the inventory of all property is conducted in countries where inheritance of movable property is taxed, such as France. In these cases, it is possible to inventory only a part of the property. However, in jurisdictions where there is a tax on the inheritance of movable property, such as Austria, the

7 *Krasheninnikov P.V.* Inheritance law. 3rd edition. Moscow: Statut, 2018.

8 https://notariat.ru/ru-ru/news/notariusy-moskvy-pomogli-vernut-v-zhiloj-fond-stolicy-bolee-500-kvartir-2112

9 Art. 1175 of the Civil Code of the Russian Federation

10 Art. 1171 of the Civil Code of the Russian Federation

inventory of the entire property will be performed. On the other hand, in countries like Armenia, Kyrgyzstan, and Tajikistan, where there is no such tax, the inventory of the entire property is not mandatory[11].

For heirs, the inventory is necessary to avoid conflict situations; accordingly, the persons whose interests are affected will, in most cases, be named, and the protective measures taken will protect the interests of absent heirs.

Based on the Order of the Ministry of Justice of June 17, 2014, No. 129, «On Approval of the Procedure for Maintaining Registers of the Unified Information System of Notaries», notaries should add information on certified wills to the Unified Information System for Notaries, which allows them to check information on the existence of a testator's will using the database of the UIS when opening an inheritance case.

The new wording of Article 1171 of the Civil Code of the Russian Federation revises the approach to the time limits for executing the measures to protect and manage the inheritance (set by the notary based on the nature and value of the assets, as well as the time required for the heirs to execute ownership of the property). In the case of a significant property volume, this allows conducting the inventory intermittently and without time limits.

Let's look at controversial situations, which may require an inventory of inherited property:

- recognition of ownership for the inheritance acquired by the heir during the escheat dispute;
- recognition of accepting the inheritance by one of the heirs with proof that the other heir missed the deadline to claim inheritance;
- belonging of the inherited property to detail the scope of the inheritance assets and its subsequent division;
- reclamation of inherited property as a result of the wrongful possession by other people;
- ownership of artworks created by an individual and the resulting disputes over copyright of intellectual property;
- unlawful enrichment among the heirs by bypassing each other and lending inherited property to renters in exchange for a fee.

To prove that the second party is behaving unfairly, the heirs have the right to request measures to protect the inherited property, even if they believe that the other heirs will not present the property or will prevent the inventory from taking place. In such a situation, the notary must arrive at the property and prepare for the inventorization, but the property will not be inventoried. The notary will issue an act indicating that the property cannot be inventoried. Such a document also has significant evidentiary value for the heirs.

The Law[12] stipulates the following: cash funds constituting the inheritance shall be put into the notary's deposit account, while precious metals, jewellery and products thereof, currency valuables, and securities not requiring management shall be transferred on a contractual basis to a bank for safekeeping (Article 921 of the Civil Code of the Russian Federation). Upon receiving deposits, a contract for safekeeping valuables is concluded and a personal safekeeping document is issued.

The law does not contain an imperative obligation for the notary to deposit cash into deposit account or to personally deposit valuables discovered during the inventory process.

In Soviet times, notaries used Clause 93 of the Instruction on the Procedure for Notarial Actions by State Notary Offices of the RSFSR[13] to protect inherited property. The state notary's office kept objects of value for safekeeping, and the notary deposited the monetary assets in the institutions of the State Bank of the USSR in the deposit account of the state notary's office. Additionally, precious metals and gemstones (in particular, pearls) and products thereof, foreign stock values (shares, bonds, coupons related to them, etc.), foreign currency and payment documents issued in foreign currency (bills of exchange, cheques, transfers, etc.) were transferred to the bank for safekeeping. We can trace a similar practice aimed at providing measures for protecting property after the death of a solitary testator and involving the transfer of movable property into the state's ownership in the current Recommendations.

Paragraph 4.4.5 of the Recommendations states that precious metals, gemstones, and products thereof, currency valuables and securities that do not require managing shall be transferred by the notary under a custody agreement with a bank, concluded in the form of a registered safekeeping document, which should be issued to the notary acting as a custodian. Therefore, the notary is responsible for retrieving the property that was deposited into the bank.

When depositing funds to the notary's bank account and transferring valuables to the bank for safekeeping, we can distinguish two issues.

The first point is the verification by the banking

11 https://disk.yandex.ru/d/RG8CLz52Fouokg

12 Art. 1172 of the Civil Code of the Russian Federation

13 Instructions on the procedure for performing notarial acts by state notary offices of the RSFSR (approved by Order of the Ministry of Justice of the RSFSR of January 6, 1987, No. 01/16-01). https://legalacts.ru/doc/instruktsija-o-porjadke-sovershenija-notarialnykh-deistvii-gosudarstvennymi (date of access: May 18, 2023).

institution of the person who applied for the operation of depositing funds to the public deposit account of the notary, as well as for the acceptance for safekeeping of valuables according to Article 921 of the Civil Code of the Russian Federation, as well as for compliance with the requirements of the 115-FZ. In such a case, the bank should interact with the heirs and not the notary, conduct questionnaires of the heirs, collect information regarding the funds and property. Currently, the bank considers the notary as a client, which makes no practical sense as the notary's profile has already been investigated by the bank when opening a public deposit account.

The second point is how interested the heirs are in inventorying the property of the deceased. This is regulated by creating an inventory, and by transferring the belongings to the bank the heirs are only fulfilling the law's requirement, but nothing more. Indeed, the protection of inheritance may be taken within any reasonable period at the discretion of the notary, and at the time of performing these notarial acts, the circle of heirs may already be determined. In such a case, the property and funds may be received from the deposit almost immediately after its opening, provided that all the necessary procedures, including those established by the 115-FZ, are followed. Heirs may also need both an inventory and safeguarding measures. When transporting money and valuables to the bank, depositing and withdrawing them from custody, it is crucial to ensure that none of the heirs have an advantage or can claim ownership of the inheritance. These measures are only legitimate if all legal procedures are followed. The focus should be put at safeguarding the property rather than the immediate deposit or withdrawal of the heirs' assets.

The description of the property may be carried out by a notary with video and photo documentation that the notary includes in the inventory to prove the presence of the property. According to the law, money and valuables should be deposited in a bank, but the procedures for packing, transporting, guarding, and transferring the assets are not regulated. The authors suggest that since these protection measures are implemented at the request of heirs or other interested private parties, the entire process of moving the movable property should be organized and paid for by the heirs themselves. The heirs should also be considered applicants when depositing the assets into the bank. All protection measures of the property (transfer to the bank) should be carried out in the presence of the notary and upon notary's written orders to the bank. In this way, while transferring and delivering valuables and monetary assets, notaries are not responsible for any loss, damage, or theft during transportation. The heirs are responsible for the security of the property, and the notary sets out specific security measures for them to follow. To ensure a safe delivery, heirs should send the money and valuables to the bank and have the notary accompany them. The notary will be present during all bank operations, which must be carried out according to the notary's instructions.

According to the author's opinion, recording in the Recommendations the relevant actions of the notary in case of discovery of valuables will contribute to achieving of all the goals: the discovered property is transferred to the bank; the persons who handed over the property are checked by both the notary and the bank for compliance with the legal provisions of 115-FZ; the notary is present at the transfer of valuables, issues orders, and ensures storage. When performing these notarial actions, the notary is relieved of excessive risk, which cannot be imposed on him when dealing with private persons. After the moment of succession opening, monetary funds and valuables belong to the heirs. As owners, they are responsible for maintaining their property by organizing and financing all measures necessary for the preservation of the property and the compulsory fulfillment of civil legislation requirements during the registration of succession to this property.

During the period when commercial credit organizations were operating in our country, notaries failed to create inventories of inherited property, which has led to issues with regulation. Furthermore, the practice of applying Article 921 of the Civil Code of the Russian Federation has not been developed correctly. According to the law, banks may accept heirs' valuables for safekeeping, although it is not obligatory, as credit organizations understand it. In our experience, banks often decline notaries the authority to finalize the necessary storage agreements[14]. However, if we alter our approach to organizing property transfers for storage, we can reach a consensus with banking institutions. They can then develop a specific banking product that includes payment by heirs for a safe deposit box to store property. This can lead to a more efficient and agreeable process for all parties involved.

Heirs can request an inventory to explain the source of property or money despite the notary's stated purpose for division.

It is crucial to consider the origin of funds from the deceased person, as it could result in tax evasion[15] and violation of the provisions of the 115-FZ[16]. This could

14 https://disk.yandex.ru/d/hlVB7nv5mGO8TA

15 Art. 199 of the Criminal Code of the Russian Federation of June 13, 1996 No. 63-FZ (as amended on April 14, 2023)

16 Federal Law of August 07, 2001 No. 115-FZ (as amended on March 18, 2023) «On Combating the Legalization (Laundering) of Proceeds of Crime and the Financing of Terrorism».

lead to an offense both for the testator and the heirs. Therefore, it is necessary to double-check whether the legislative requirements are being followed to prevent money laundering and terrorism financing. Notaries should ensure compliance when creating the inventory, and credit organizations should verify compliance when heirs deposit money with the notary for safekeeping of valuables.

Conclusion

Implementation of a double verification process can help minimize the possibility of heirs exploiting their privileges.

The proposed changes to the Recommendations suggest that when monetary assets are discovered during the inventory procedure, they must be deposited into the notary's public deposit account by order and in the presence of the notary. On the other hand, precious metals, gemstones, and products thereof, currency valuables, and securities that do not require management should be deposited by the heirs in a bank. The notary must confirm the acceptance of these items for safekeeping.

A project is needed to enable credit organizations to accept and safeguard valuable items. The concept is similar to the provisions of Article 921 of the Civil Code of the Russian Federation, where depositors (in this case, heirs or clients) entrust the bank to be the custodian of their valuables. The agreement should prohibit clients from depositing or withdrawing their valuables from the safe without the authorization of a notary. The notary's presence should also be mandatory when the valuables are being deposited or withdrawn.

Such amendments will assist in regulating relations without changes in the civil legislation, as the federal legislation does not provide for the notary's obligation to receive financial resources from heirs for further depositing them into a public deposit account, as well as for transferring other property to a bank for safekeeping.

During the Soviet period, if a solitary citizen passed away, their property was subject to inventory, and valuables had to be deposited by the notary. The income from the realization of escheat property was supposed to go to the state. As a result, the methodological recommendations assigned this duty to the notary "habitually".

In this case, we are discussing private legal relations where the state's interests are not involved. The heirs can deposit monetary assets into their bank accounts or transfer valuables to the bank. In case of any unfortunate events such as robbery, theft, or fraud during the transfer process, the heirs can apply to the law enforcement or judicial authorities directly without involving a notary.

When the heirs contact a notary to prepare an inventory, they will be informed that any money and valuable items found must be deposited into a bank according to a specific order. They will then take measures to organize the transfer of the valuable items to the bank. This norm will be enforced, and citizens will receive notary assistance that is carried out in strict compliance with the law.

The sole inheritor may want to verify the source of funds and property for tax and law enforcement purposes. They may also want to confirm the legal acquisition of any art objects that are being sold. To achieve this, they can consider creating an inventory of the inheritance.

It's crucial to prepare inventory of an inherited property to ensure its preservation. Due to this, the notary doesn't describe the property since the heir is responsible for taking measures to safeguard their inheritance.

Upon request from the heir, a record of evidence may be created to confirm the presence of specific property at the residence of the deceased on a certain date.

The inventory of inherited property, if it is not disputed by the interested parties, confirms the ownership of the property of the testator and serves as the basis for issuing a certificate of right to the inherited property listed in the inventory.

This measure could be achieved in a reasonable timeframe once the inheritance case has been opened and the beneficiaries are given access; for example, when the sole heir needs to secure evidence, they will be granted access. Regarding the argument of possible forgery, it can be said that heirs can forge property in both cases. However, it is equally possible to assert the good faith of participants in civil transactions who wish to document the movable property of the deceased without resorting to any forgery of property that does not belong to the deceased. This holds regardless of whether there are multiple heirs or a single heir.

At first glance, it seems reasonable to issue a certificate of right to inheritance to the sole legal successor under the protocol of securing evidence with an inventory of inherited property. However, if the property includes monetary assets and valuables specified in Article 1172 of the Civil Code of the Russian Federation, the property is not transferred to the bank for safekeeping since no security measures are taken, and the enforcement of 115-FZ by the applicant is within the area of responsibility of the notary.

The proposal suggests giving temporary evidence for the appeal of the sole heir. Later, the issue can be reviewed once notaries have gained experience in identifying large estates and collections in inventories and safely keeping such property under the possession of heirs.

When conducting the inventory, notaries should pay attention to all circumstances accompanying the execution of documents on the inheritance case to exclude subsequent legal disputes between heirs, to protect the rights and interests of the parties, and to act as a representative of preventive justice. The notary should ensure that in the event of an appeal against the measures to safeguard inheritance property, the full scope of the notary's verification actions, explanations and recording of the parties' statements will be assessed by the court as necessary and sufficient under the circumstances, the notarial measures will remain valid, and the mechanism for safeguarding inheritance property will be effective.

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