

Author: Paweł Księżak

Title: Dobrodziejstwo inwentarza po nowelizacji Kodeksu cywilnego z 2015 r. – aspekty materialnoprawne / The benefit of inventory after the amendment to the Civil Code of 2015. Substantive law aspects

Source: Kwartalnik Prawa Prywatnego („Quarterly of Private Law”)

Year: 2015, vol: XXIV, number 4, pages: 875-910

Keywords: inheritance, benefit of inventory, acceptance and rejection of inheritance, liability for estate debts, inventory, inventory list

Discipline: Law (Private Law)

Language: Polish

Document type: Article

Publication order reference: University of Łódź, Faculty of Law and Administration

Abstract:

With the passing of a new act on 20 March 2015 (effective 18 October 2015), concerning the amendment to the Civil Code and certain other acts (Dziennik Ustaw [Journal of Laws] 2015, item 539), changes were made to several regulations of liability for estate debts. The key change is the replacement of the principle of unlimited liability by that of the benefit of inventory (i.e. liability is limited to the extent of the value of the inherited assets). Within six months from the day on which the heir became aware of his appointment to inheritance, he may reject the inheritance, accept it with full liability for debts, or accept it with the benefit of inventory. In the absence of a declaration within the specified period, the result is tantamount to accepting the inheritance with the benefit of inventory. The amendment must be seen as justified, as it prevents an array of unjust rulings which could result from the passivity of the frequently unaware heirs.

Simultaneously, the act introduces a new procedure (the inventory list), which will function alongside the already extant inventory of the estate, which is prepared by the court executive officer. The inventory list is a private document prepared by the heir, the legatee or the executor of the estate and does not incur any costs. The list is filed with a court and the information about the filing is published on the court's website. The heir is obliged to pay the estate debts in accordance with the filed inventory. In this aspect also, the amendment must be seen as justified.

Unfortunately, the regulations of liability for estate debts still contain numerous fundamental gaps, which may critically endanger the interests both of heirs and of the creditors of the inheritance. First and foremost, no procedures exist for the liquidation of

inheritance or for calling upon the creditors. Worse still, there is no regulation of the order in which the estate debts are to be paid. The heir is liable for the payment of estate debts in due manner, but the aforesaid manner is not expressly specified. This leads to the conclusion that further, essential changes must be made to the regulations of liability for estate debts.