

Probate: How to file a Statement of Acceptance or Rejection of Inheritance in Poland without leaving Ireland

A Polish national is required to file a Statement of Acceptance or Rejection of Inheritance (*Oświadczenie o Przyjęciu lub Odrzuceniu Spadku*) within six months from the date s/he becomes aware of her/his duty to do so (i.e. becoming aware of a death in the family).¹ It should be stressed here that a Statement must be filed in the event of either the existence or non-existence of a Final Will and Testament of the deceased person. It is paramount that an applicant familiarise her/himself with Art. 927 §2 of the Polish Civil Code (*Kodeks Cywilny*), as it may be applicable to her/him and/or her/his close relatives (i.e. already born and/or unborn child(ren)).²

Unfortunately, Polish law is not as simple as it seems when it comes to filing the said Statement in Polish courts. Under the Polish Civil Code an applicant is required to file the Statement in person along with other legal requirements.³ However, if someone is unable to travel to Poland, here are some steps which may assist a person to complete the process without the necessity of travelling to Poland.

To complete the process of filing relevant paperwork an applicant will need the following:

- (a) Original and sworn Statement made before the Polish Consul.
- (b) Additional letter from a Polish notary addressed to a relevant court in Poland. If you are unable to find a notary in Poland, you can compose a letter yourself.
- (c) Original Death Certificate.
- (d) Any other documents (if any) that are required by Polish courts.
- (e) Your Polish passport/National ID Card.

2. Complete the template based on your personal situation (acceptance or rejection of the inheritance). If you know the address(es) of your siblings, please enter same on the form. If you do not know it (or do not wish to write any), simply write 'address unknown.'
3. Make an appointment with the Polish Consul using the official website of the Polish Consulate to get your Statement signed, dated and sworn.⁵ Alternatively, you can use the services of your local solicitor or notary public.
4. Next, depending on your situation, you will have to:
 - (a) Find a competent notary (*notariusz*) in Poland who will compose an appropriate letter to file your sworn Statement on your behalf. A family member in Poland might be able to find you a good and reliable notary.
 - (i) Post your original, sworn Statement to your notary (or to a family member) by registered post.
 - (ii) Ensure that your notary files all the documents in the relevant court on your behalf, and confirms that the process is fully completed.
 - (iii) Cover notary's fees.
 - (iv) Cover court fees; or
 - (b) Do it yourself:
 - (i) Compose a basic letter to file your sworn Statement. Sample letters can be found at the links in the footnote below.⁶ Alternatively, you can check the official website of the relevant court, if you know where exactly to file your completed documents.⁷

PROCEDURE:

1. Go to the official website of the Polish Consulate in Dublin and download their template of the Statement.⁴

¹ Art. 1015 §1 ustawy z dnia 23 kwietnia 1964 roku Kodeks cywilny (tekst jedn. Dz.U. z 2014 roku, poz. 121 z późn. zm.) and <https://www.arslege.pl/kodeks-cywilny/k9/s2055/>

² Art. 927 §2 ustawy z dnia 23 kwietnia 1964 roku Kodeks cywilny (tekst jedn. Dz.U. z 2014 roku, poz. 121 z późn. zm.) and <https://www.arslege.pl/kodeks-cywilny/k9/>

³ Art. 641 ustawy z dnia 17 listopada 1964 Kodeks postępowania cywilnego (tekst jedn. Dz.U. z 2014 roku poz. 101 z późn. zm.)

⁴ <https://www.gov.pl/web/irlania/odrzucenie-lub-przyjecie-spadku>

⁵ <https://secure.e-konsulat.gov.pl/Uslugi/RejestracjaTerminu.aspx?IDUSLUGI=5&IDPlacowki=151>

⁶ http://rzeszow.sr.gov.pl/boi/ulotki/Wzor_wniosku_o_stwierdzenie_nabyicia_spadku.pdf and <https://radom.sr.gov.pl/container/wniosek-o-stwierdzenie-nabyicia-spadku.pdf>

⁷ <http://www.sopot.sr.gov.pl/wniosek-o-stwierdzenie-nabyicia-spadku-po-1-osobie/>

- (ii) Ensure that you list any relevant attachments (*załączniki*) and legal basis (*podstawy prawne*) in your letter. However, legal bases are not always mandatory – this depends on Polish forms in various regions.
- (iii) Contact your relatives in Poland and asked them to contact the relevant court office to confirm that they will be able to file all the documents on your behalf (they will have to pay a fee when filing your papers). It might be helpful for them to highlight the fact that you are unable to attend in person to file the Statement in Court. Remember to post all the documents (signed and dated) by registered post – you do not want them to go missing. Sometimes it is possible to pay a fee (*opłata skarbową*) online and to send all your documents by registered post to the Court – please note that this option must be confirmed with the relevant court office first.

If a current postal address is provided to the court when filing the documents, please be advised that under Polish law, the Court may (or may not) send an applicant a letter requesting her/him to attend at Court in Poland on a specific date in respect of her/his filed Statement. The Court's request is not mandatory and is at the Court's discretion. Generally, if the Statement is straightforward (fully completed, stamped, sworn, dated and without any potential legal complications or challenges) an applicant should not be compelled by the Court to attend any court hearings regarding her/his inheritance.

To obtain free legal advice regarding your Statement, you can contact the Civil Legal Section in the Polish Consulate in Dublin. The rest of the process is, unfortunately, your own responsibility as Polish law does not – at the moment – allow the Consul (or her/his staff) to file any paperwork in Poland on your behalf in this particular legal matter.

An applicant should note that a signed and sworn Statement before the Polish Consul is legally valid in Poland.⁸ Beware of incorrect information given by notaries in Poland who may inform you that they are not

able to file documents on your behalf and/or that the signature of the Polish Consul is invalid.

Finally, it is worth pointing out that using a local solicitor or notary public in Ireland to witness your signature on the Statement might prove insufficient in Poland. Despite having an apostille (*nostryfikacja*) on the sworn Statement, it may not be accepted by the courts in Poland. This procedure remains a grey area in Polish law and *de facto* an applicant throws her/himself at the mercy of the Court. However, if anyone wishes to use the apostille option (from the Department of Foreign Affairs and Trade or notary public), it should be first confirmed with the relevant Polish court office that this document will be accepted by them. Furthermore, an applicant will bear any costs of a sworn/certified translation of the apostille from English to Polish. Also, anyone is free to retain a registered agent in Ireland to deal with the issue of filing documents in Poland but this option is at the applicant's own risk. It should be kept in mind that the onus is on the applicant to file the Statement (*Oświadczenie o Przyjęciu lub Odrzuceniu Spadku*) within a six-month time period with a Polish court pursuant to the Polish Civil Code (*Kodeks Cywilny*). Late filing or no action at all will have its legal repercussions. If the documents are filed incomplete and/or filed incorrectly, an applicant will be forced to start the process of filing from the beginning.

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⁸ Art. 28 ust. 1 pkt 2 ustawy z dnia 25 czerwca 2015 roku Prawo konsularne (Dz. U. z 2015 roku, poz. 1274 z późn. zm.)