

## **Portugal's Inheritance Law –pitfalls & tricks to understand**

Portuguese inheritance law follows a system of forced heirship. Under this regime, legitimate heirs are the spouse, biological and adopted descendants, and ascendants of the deceased, who are entitled to a portion of the estate. Normally, only a third of the entire estate is free to give. And if you write differently in a will, your last wishes can be challenged in the courts. This regime is automatically applicable to Portuguese nationals. This is the opposite of the testamentary freedom that exists in some other countries. If no will in Portugal has been written, and there are no legitimate heirs or other family to inherit the estate, then it will be given to the Portuguese state.

If you are not a Portuguese national, you can choose your national inheritance law to be the one applicable to your estate, and consequently ward off the Portuguese inheritance law. For that, you just have to write a will and specify the law applicable to your estate. After the European Rule (Regulation nº 650/2012), getting in force on 17th August 2015, if you are a resident in Portugal, you have not written a will and you die in Portugal, then the Portuguese inheritance law will be automatically applicable to your estate, even not being a Portuguese national. So, the only way to avoid this will be through signing a will choosing the national law to be applicable to your estate.

Another important point to consider is asking for Portuguese nationality. Once you become a Portuguese national, the Portuguese inheritance law will become automatically applicable, and consequently, the system of forced heirship will have to be respected during probate.

Beneficiaries of an estate in Portugal must accept the whole of the estate, including the debts of the deceased. Beneficiaries can renounce their right to accept the inheritance, but they cannot partially renounce and instead they must renounce their right in its entirety by public deed.

An inheritance must be accepted within 10 years of the death of the deceased. If the inheritance is not accepted within 10 years, then the right to inherit is lost.

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If the beneficiaries of an estate are the spouse and children of the deceased, then there will be no stamp duty payable in respect of the inheritance, although the inheritance will need to be declared to the Portuguese tax department. In the event that the beneficiaries are more remote relatives, for example an uncle or a cousin, then tax will be payable at a rate of 10% of the assets comprising the estate.

Heirs, if not residents in Portugal, can be charged in their country of residence for the amount of the estate received. So, this point should be considered as well when planning your inheritance.

The transfer of assets, whether taxable or not, must be reported to the Portuguese tax department within three months of date of the death. If not, a penalty will be charged. In addition to any stamp duty payable there will be additional expenses in relation to the Notary's fees, the land registry's fees and additional miscellaneous costs such as translation fees, legalisation fees and courier fees.

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