



## Rules of Succession in Portugal

*The following text outlines the rules of succession in Portugal. As a foreigner in Portugal, the rules of domicile in your jurisdiction of origin may be the ones that govern the succession of your estate. For Portuguese law to be considered to be the applicable “personal law” (the body of law that governs one’s person), you must make this choice in writing, based on the EU directive known as Brussel IV. Keep in mind that the UK, Ireland and Denmark are not cosignatories to this policy.*

When you die, your property passes on to your heirs. The law establishes the succession of assets, rights as well as debts. If you do not have life insurance, the inheritance will serve to liquidate the property to settle any debt.

There are also expenses related to funeral and religious acts, the will, administration and liquidation of the deceased's estate. When you want to leave the inheritance to the legitimate heirs (immediate family members), you do not need to make a Will. But to benefit someone else, you must express your intention in writing (a last will and testament).

It is also the appropriate means for recognizing a debt, replacing a previous Will, and appointing a guardian to a minor child (to substitute parents if they die), establishing legacies or indicating substitutes for heirs if they can not or do not want to accept the inheritance. The testament can also be the vehicle to express an individual's wishes regarding the type of funeral ceremony, place of burial, etc. Your Will is also the best way for you to recognise Portuguese law to govern the succession of your estate.



## With and without will

The most common solution in Portugal is that there is no testament and the property is divided between the legitimate heirs. These are, in the order of succession classes: spouse and descendants, spouse and ascendants, siblings and their descendants, other relatives in the collateral line up to the 4th degree and the State.

The heirs closest to the deceased are the first to be called to the succession, excluding the right to inherit from the most distant. If, for example, the deceased leaves a spouse and children or only the latter, the parents will not be called. If you do not have children, but the parents survive, your brothers will not inherit and so on. Within each class, closer relatives have priority. That is, parents exclude grandparents; children exclude grandchildren, and the third-degree relatives exclude relations to the 4th-degree. If there is no surviving relative, the State becomes the heir.

To benefit others, you shall need make a Will. Even so, you are not free to distribute assets at your pleasure. The law protects the spouse, the ascendants and the descendants (legitimate heirs), guaranteeing them a share of the estate. To calculate this "legitimate" quota, the value of the goods at the date of death or a donation must be taken into account. Expenses are subject to collation (corresponding to gifts made in life to descendant heirs and inheritance debts). Life insurance is exempt from these rules, as anyone can be the beneficiary. It is even possible that this capital surpasses the value of the estate left in inheritance.

## Accept or reject

No one is obligated to accept an inheritance. But this decision must be well thought out. Although the debts of the deceased are legally binding up to the amount to where the inheritance is exhausted, the heir may still have to prove to the creditors that there are no longer any assets left to pay them.



If, after the death in an inheritance, an heir starts to use the car or to reside in the house, it is understood that the inheritance has been accepted. This is "tacit acceptance". But this can also be "expressed" when the beneficiary states in writing that this is his or her intention. To do this, simply send a letter to the head of household or to the executor (representative of the deceased). Your right to accept or repudiate the estate only expires 10 years after having been made aware that you are a beneficiary of an inheritance.

In other instances, an heir might not want the assets. A descendent may wish to renounce in favour of the surviving parent in order to facilitate the parent's on-going financial independence.

Contrary to what happens in acceptance, you must always express repudiation in writing and follow the rules for transfer of ownership of the inheritance, especially if the inheritance is partly or entirely comprised of real property.

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