



## Portuguese Wills

Estate Planning can be a complex process for the Foreign Resident in Portugal due to the laws of different jurisdictions that need to be reconciled. Making a local will should dramatically reduce expenses and avoids needless delays in the succession process. It is particularly advisable for property owners to make a will in Portugal dealing with their assets in Portugal. The Portuguese will does not replace but rather supplements your existing Will in your home jurisdiction. If a person dies intestate (without a will), he leaves no guideline as to how assets are to be distributed. A simple yet properly thought out will can save a family much confusion and discomfort at a time of bereavement.

A will is read in accordance with the personal law (“*lei pessoal*”) of an individual, a concept in Civil Law roughly equivalent to “Domicile” in Common Law jurisdictions. For those who have not established a Domicile of Choice in Portugal, their Will must be read under the legal guidelines of the country of origin.

Portuguese legislation recognizes several types:

- 1) “*Testamento Público*”: The Public Will is dictated to the notary by the individual who then drafts the document in the presence of the author and two witnesses. The individual then signs and the will is subsequently recorded by the notary.
- 2) “*Testamento Cerrado*”: The Closed Will is drafted by the individual or by the solicitor or person of his/her choosing and subsequently notarized. The Notary only recognizes the document and does not keep a copy, the safekeeping of which is entrusted to the responsibility of the individual.



3) “*Testamento Internacional*”: Pursuant to an international convention called the Washington Convention of 1973, any country which adopts the Convention agrees to recognize as valid in its jurisdiction a will prepared in accordance with the provisions of the Act. Portugal is a party to this Convention. While quite simple and straightforward for the testator (the person registering the will), the other forms of testament mentioned above are usually preferable in terms of simplicity and economy when the estate is eventually executed.

If and when one’s *personal law* becomes that of Portugal, there are several important consequences. First, Portugal applies the principal of Territoriality. This means that the scope of the deceased’ estate is limited to assets within Portugal. Portuguese law does not attempt to regulate or tax any part of the estate that is outside of the borders of Portugal. Secondly, there are restrictions to the discretion of the testator. Legislation requires forced inheritance in many instances and only permits limited leeway to an individual in the Will. Finally, Portugal abolished inheritance Tax in 2004. All bequests to immediate family members (spouse, children, grandchildren, parent and grandparents) are tax exempt. Other transfers are assessed 10% Stamp Duty.

### ***The Limitations of the Will***

Portuguese Law requires forced inheritance in many instances and only permits limited discretion to the testator. The following table illustrates the part of the estate that an individual can control and the part that is predetermined by legislation. Many Portuguese forego having a will when the mandated distribution coincides with an individual’s intentions.



<i>Living Relatives at the Time of Death</i>	<i>Part of Inheritance Free to Allocate</i>
Spouse	1/2
Spouse and Children (a)	1/3
Two or more Children	1/3
One Child	1/2
Spouse and Parents/Grandparents	1/3
Father and/or Mother	1/2
Grandparents/ Great grandparents	2/3
No Living Relatives	ALL

(a) The spouse receives 1/4, if there are more than 3 children. The remaining 3/4 is to be divided equally amongst the children.

### ***Who can make a will***

Anyone can make a *will* except minors and those who are judicially deemed unfit.

### ***Who cannot be an heir***

In order to avoid conflicts of interests, certain people cannot be named beneficiaries. This is the case with Doctors, Nurses or Priests who assist an individual at the time of death. The same applies to a tutor, legal administrator, or guardian (unless a family member), an accomplice in the event of adultery of the deceased or anyone intervening in the preparation of the will.

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26 February 2019