



Portuguese wills guide



**A comprehensive guide to
making a will in Portugal**



PORTUGAL

This is my happy Motherland, beloved of mine

10 million Population

79th most populous country on earth

11 Provinces

Capital : Lisbon

Currency : Euro (EUR)

Languages : Portuguese, Mirandese

EUROPE



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Introduction	4
Portuguese Wills FAQ's	5
Not having a Will	6
UK Wills	7
Portuguese Wills	8
Notary Public	10
Portuguese Wills Registry	11
Inheritance and Taxes	12
Fees and Costs	14
Useful Terms	15
Why Use Judicare	17

introduction



A death of a friend or a family member is extremely difficult at the best of times - especially if you have to deal with the mechanics of the inheritance. Dealing therefore with the legal process in a different unfamiliar country only adds to that difficulty. One of the practical things to help avoid future stress and cost for your family and beneficiaries is to plan effectively and ensure that you have in place a valid Portuguese Will.

When you buy a property in Portugal the last thing that you normally think about is making a Portuguese Will - after all there is furniture to pay for, that first trip to organize and all those sorts of exciting things. However, when you have just bought is often the best time to make a Portuguese will.

Done properly a Portuguese Will can not only make the lives of your beneficiaries easier during a difficult time but can also prove extremely cost effective, and will undoubtedly cost less than dealing with matters if no Portuguese Will is provided.

Are the inheritance rules in Portugal the same as the UK?

No, the processes are very different, but there is an interaction between them when you inherit a property in Portugal. That is why the best person to advise you on your purchase in Portugal is somebody who understands both Portuguese and UK law.

Do I have to make a Will?

No, you don't as it is possible to deal with an inheritance that is intestate (i.e. without a Will). However, if you don't make a Will then you run the risk that your assets go to the wrong person or that the process of inheriting from you is more complicated and / or expensive than it needs to be. By the Portuguese law, if you do not have a will and die resident in Portugal all your assets will be distributed by the "forced heirs" .

Can I just leave my assets in Portugal with my UK Will?

Yes you can, but this may not be the best way of dealing with your estate as the two legal systems are very different and it may be better to leave assets to different people in different countries. The cost of translating a UK Will into Portuguese (which is required on an inheritance) is generally more than the cost of making a Portuguese Will in the first place.

Can I have two Wills?

Most people are not aware that you can have more than one Will (for example one in the UK dealing with your UK assets and one in Portugal dealing with your Portuguese assets). You can have two Wills that work together providing that they are drafted well. Drafted incorrectly you might accidentally revoke the other Will.

Do I have to leave my Portuguese assets to my children?

This is the most common question we get asked about Portuguese Wills. In short if you are not Portuguese or not resident then no, you don't. If you are resident in Portugal then you can get around this requirement in your Will. There is a section later on in this guide giving further advice on this.

no will

You don't have to make a Will at all - either in Portuguese or in the UK. If you don't leave a Will then your assets will be dealt with in accordance with the rules of Intestacy. The Intestacy Rules set out who should inherit from you if you have not made a Will. Who will inherit from you will depend on a number of factors including whether you are married or in a civil partnership, whether you have children, where you are resident and how much your estate is worth.

You may not want those people to inherit from you. By making a Will you can make sure that the right people get your assets when you die. According to the Portuguese law, you can leave to anyone you want a part of your assets, which is called "Quota Disponível", and it will not collide with the "forced heirs". For this purpose, writing a Will is the best way to proceed with the deceased will. If you don't leave any Will then it will be necessary to explain to the authorities in Portugal who is entitled to your assets in accordance with UK law. This will require a Declaration of Law to be drafted and then translated and legalized. This all increases both the costs and time taken to deal with your inheritance





It is possible to leave assets in Portugal using a foreign Will as Portuguese Law recognizes Wills that are made abroad. Therefore you can draft your UK Will to include your Portuguese assets.

However, doing this unnecessarily increases the costs of the subsequent inheritance in terms of the costs and sometimes taxes. The reason for this is that the process becomes more difficult - each document needed needs to be translated and legalized. The cost of translating a UK Will into Portuguese can run into hundreds of pounds on its own. Further to this the process slows down as we have to wait for the Grant of Probate to be issued in the UK before we can progress the inheritance in Portugal, which will normally mean that the inheritance taxes are not paid in time in Portugal resulting in a fine and late payment interest.

It may be necessary to draft a Declaration of Law which confirms to the authorities in Portugal that the UK Will is valid in the UK and also who the beneficiaries are. It is also often necessary to explain to the authorities in Portugal how a UK inheritance works as the two systems are very different - in Portugal, for example, it is the beneficiaries who inherit directly rather than using executors, administrators, trustees and the like.

Portuguese wills



The easiest way of dealing with an inheritance in Portugal is by using a Portuguese Will.

This is for several reasons. First of all the Will is made in Portuguese and in the Portuguese format. It will be drafted signed, witnessed and registered in accordance with Portuguese law on Wills.

In short it will be what the Portuguese Authorities are used to and will be expecting. Because of this the authorities will know how to deal with it and therefore the whole process will be smoother than if you were using a UK Will to leave your assets.

There will be less documents needed and less steps required to get to the signature of the Deed of Acceptance of Inheritance.

Secondly, because the authorities in Portugal will understand the Will and the process; the cost will be less.

The cost of translating a UK Will into Portuguese is normally more than the cost of making a Portuguese Will in the first place. If a UK Will is used then it is likely that a Declaration of Law is required to explain to the Portuguese Authorities how the UK Will works and how it is valid. This increases the cost of the inheritance

Thirdly if a Portuguese Will is used for your Portuguese assets then it will not be necessary to wait for the UK Inheritance to progress before progressing things in Portugal.

Leaving your assets in Portugal using a UK Will would mean that you would need to wait for the UK Grant of Probate before starting the process in Portugal.

This in turn is likely to mean that the three month voluntary period for paying the inheritance taxes in Portugal will be missed, meaning that there will be a fine for late payment and interest added on the outstanding amount.

Making a Portuguese Will therefore saves your beneficiaries cost and time.

Lastly the way that Inheritance Tax in Portugal works is very different to the UK. Therefore the way that you leave your assets in the UK is not necessarily the best way to leave your assets in Portugal. UK law tends to favor leaving your assets to your spouse whereas Portuguese Law is all geared around leaving your assets to your spouse and children.

This fundamental difference in the approach of Inheritance Law is reflected in the way that the Inheritance Tax works. The easier and cheaper you can make your inheritance the easier it is for your beneficiaries to cope with your departure and also means that they will receive more of your assets.

notary public

Portuguese Wills are drafted and signed in a different way to the way that they are done in the UK. The format of the Will is different, as is the style. The Portuguese use Notarial system for the signature of important documents such as Title Deeds and wills, which are deposited in the Notary's office. The role of the Notary Public is essentially to make sure that you are who you are, that you understand what you are signing, to make sure that you are signing the document under your own free will and to complete certain formalities.

The Notary can be in the UK or in Portugal but must be able to understand the document. Wills signed in the UK require legalization at the Foreign & Commonwealth Office.

There are two types of Portuguese Wills;

Public Wills The most common type of Portuguese Will.. The Notary rights the Will on his note book, maintains an original in is office, and makes sure that you understand it and that you are who you are. He witnesses the Will. However, the testator is usually accompanied by two witnesses.

Closed Wills The person granting the Will writes and signs his Will and the Will is confirmed by the Notary.





The Portuguese Wills system is, in some ways, superior to that in the UK. One example of this is that in Portugal there is a Wills Registry where Wills can be registered. Wills Registries exist in the UK but they are run by companies and often aren't used.

In Portugal Wills can be registered at Registos Centrais, a public entity which is in charge for matters related to citizenship and will matters.

One of the documents required to carry out an acceptance of inheritance in Portugal is a certificate habilitation of heirs (Habilitação de Herdeiros).

This document proves that you are the heir of somebody and you cannot carry out an inheritance in Portugal without it.

inheritance.....

Portuguese Inheritance Law states that when you die your property will be shared among your heirs according to the law of your residence unless you have left a will stating that it is the law of your nationality that applies. It is a common misconception that as a foreigner you have to leave your assets in accordance with Portuguese law, which imposes certain “forced heirs”. A “foreigner” can make a Portuguese Will leaving his own property to the person of their choice. This Will must contain a declaration that their personal law is governed by the principle of free disposition of property by testament. This is then acceptable to the Central Wills Registry (Registos Centrais) in Portugal. Generally speaking a valid Portuguese will is sufficient to dispose of the estate as you wish.

Inheritance tax on property or assets in Portugal has to be paid in Portugal. The property or assets also have to be declared back in the UK although due to Double Taxation Agreements you can offset the tax paid in Portugal against the tax payable in the UK.

The rate of inheritance tax payable in Portugal will depend on:

1. The relationship between the person who died and the beneficiaries (some categories are exempt);
2. The rate is always 10% of the total value of the inheritance;
3. The type of goods, some are exempt of tax, such as stock dividends, personal goods, retirement saving funds and education funds, savings in stock, pensions or investment real estate, credits from life insurance, pension and social security allowances.

The closest relatives have a tax exemption:

- Husband / Wife
- Children
- Grandchildren
- Parents
- Grandparents

The rest of the relatives or people who are not directly related to the deceased do not have a tax exemption and pay tax on the full amount of 10 %.

All of the heirs benefit from the exemption of the good referred before.

We highlight that a true inheritance tax was abolished from the Portuguese legislation in 2004 and it was substituted by the “Imposto do Selo”, which covers several transactions in Portugal and inheritance too. Therefore, it is not a special tax for inheritance.



fees and costs

Our charges.

For a simple Portuguese Will we charge £950 plus VAT. That should cover the majority of typical cases. More complicated structures may require more work than a typical Will and will therefore cost more. We would give an estimate for this cost prior to instruction.

There are likely to be various additional fees that will need to be paid on top of our professional fees;

Notary fees - Typically €40 if signed in Portugal and £100 if signed in the UK

Legalisation fees - £30 per Will

Wills Registry fees - Free

Our charges include;

- **Taking your instructions on what you want to happen with your assets**
- **Advising you whether your proposed course of action is legal and whether it seems sensible**
- **Drafting your Will**
- **Making arrangements for you to sign the Will**
- **Registering the Will and the Portuguese Wills Registry**

Advogado	Lawyer or solicitor
Avô / Avó	Grandfather / Grandmother
Aceitação da Herança	Acceptance of inheritance / probate
Apostilla	Apostille (at Foreign & Commonwealth Office)
Consultor fiscal	Tax consultant
Câmara Municipal	Town Hall
Beneficiário	Beneficiary / Heir
Condomínio	Community of owners / Residents Association
Declaração de nova obra	Declaration of new building work (At the Notary)
Falecido	The deceased
Domicílio	Residence
Enterro	Funeral
Escritura	Title Deeds
Funerária	Funeral Directors
Repartição de Finanças	Tax Office
Herdeiros Legitimários	Forced Heirs
Herança	Inheritance
Filha	Daughter
Filho	Son
Filhos	Children
IMI (Imposto Municipal sobre imóveis)	Council Tax
Imposto	Tax
Imobiliária	Estate Agency
IVA (Imposto sobre o Valor Acrescentado)	VAT (Value Added Tax)

....useful terms

Jurisdição	Jurisdiction
Chave	Key
Lei	Law
Licença	Licence
Luz	Light (but often refers to electricity)
Mãe	Mother
Morte	Death
NIF (Número de Identificação Fiscal)	Foreigner's Identification Number
Pesquisa do Registo Predial	Land Registry Search
Notário	Notary Public
Pai	Father
Procuração	Power of Attorney
Apólice de Seguro	Insurance policy
Prescrição	Limitation period (for paying taxes)
Propriedade	Property
Registo de Testamentos	Wills registry
Registo Predial	Land Registry
Renúncia	Renounce
Residente / Residência	Resident / Residence
Sucessores	Inheritance / Succession
Herança Legitimária	Intestate inheritance
Sociedade	Company
Terreno	Plot
Testamento	Will
Usufruto	Life interest
Valor Tributável	Official value of the property

Portuguese lawyers

A highly experienced Portuguese legal team.

We are Solicitors

We are a UK based firm of Solicitors regulated by the Solicitors Regulation Authority and who specialise in international legal issues.

We understand both sets of laws

Because we understand both sets of laws we understand the difficulties that come when two sets of laws meet.. This is particularly important when it comes to issues involving ownership, taxation and inheritance.

We are members of AIPP

The Association of International Property Professionals was set up to improve standards of professionalism in a largely unregulated overseas property market.

Experience

Our Portuguese team has many years of experience dealing with a whole range of legal issues with Portugal.

We speak your language

You need a lawyer who can speak your own language. More importantly you need somebody who can explain and discuss often complicated issues in terms that you understand.

Independence

We are independent. We are not allowed to act for the buyer and the seller at the same time. We are not linked with any Development Companies, Builders or Estate Agents.

Contacts

A member of the Judicare Team can be contacted either by phone, email or post.

t: 01438 840258 • **e:** admin@judicaregroup.com • **w:** www.judicaregroup.com



www.judicaregroup.com

Associate Offices

Brazil Cape Verde Cyprus Dominican Republic Greece Italy Morocco Portugal Spain Turkey UAE

Judicare Law International Limited

3a The Grange, 3 Codicote Road, Welwyn, Herts AL6 9LY - Tel: 01438 840258 - Fax: 0870 123 6289 - Email: admin@judicaregroup.com