

Italian Inheritance Guide



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1. What is Succession and how is it ruled under Italian Law?

Succession law controls the transfer process of financial and real estate rights and duties of an individual to his/her heirs with the succession procedure commencing at the time of death. Succession law in Italy is founded on the basis of Unity of Inheritance.

To determine the distribution of immovable assets, “*lex rei sitae*” (the law of the country where the property is located applies) will apply. Thus, property assets in other countries will be delimited by the law of the country in which it is located. Furthermore, the distribution of moveable assets of the deceased Estate is completed under the decree of the last citizenship/domicile of the deceased. The above criterion remains relevant on deaths that happened prior to 17 August 2015.

The European Regulation (650/2012), entered into force on 17 August 2015, has set out a different principle regarding International Estate’s. The difference between moveable and immovable assets has been disregarded and the only element to keep in consideration is the “habitual residence” of the Deceased. Accordingly, the legislation which governs the distribution of the Deceased’s Estate (both moveable and immovable) is the law of the country from which the deceased resided. The Regulation has specified that this criterion is to be adopted regardless of if the country is a member of the European Union. This legislation applies to all Succession Procedures where the deceased has passed away on or after 17 August 2015.

In order to complete the succession procedure, all assets, rights and pending payments have to be successfully allocated and transferred to the inheritors of the Estate. This will occur once the succession form has been lodged and approved by the relevant body (*Agenzia delle Entrate*).

The death of an individual entails the need to undertake a series of tasks to complete the succession procedure, including:

- Searching for the current Will;
- Making an inventory of the Deceased’s Estate;
- Determining any safe deposit boxes and bank accounts; and
- Contacting relevant authorities that may be needed during the succession procedure.

*Porta Lawyers will provide all of the required services through our Brisbane based Italian Registered Lawyer, **Fabrizio Fiorino**. There is no need for you to engage further services in Italy.*

2. Documents Required for Succession Procedure

A number of documents need to be collected following a death in order to commence the succession procedure and complete “*Dichiarazione Di Successione*”, including:

1. **Death Certificate** – issued by the competent authority;
2. **Affidavit concerning the family situation of the deceased** – a public deed where a statement is made concerning the deceased’s family tree;
3. **Title deeds of purchase of buildings and lands** – including additional documents in relation to modification or work done on the property, if any;
4. **Family certificate of the Deceased** – document issued by the Registry of Civil Records and/or Registry office of the Municipality to identify the qualification and legitimacy of the heirs.

Two types of succession procedures can be undertaken to distribute the Deceased’s Estate:

1. **Legitimate succession** (also referred to as “intestate succession”) where there is a lack of testamentary disposition by the Deceased – ruled by the governing law; and
2. **Testamentary succession** where the Estate distribution is determined in accordance with the Will whilst remaining compliant to the regulations.

3. Legitimate Succession

If an individual dies without a Will, commonly known as “intestate”, Italian law determines which family members have legitimate inheritance rights and the division of assets. If there are no legitimate heirs up to the sixth degree of kinship to succeed the Estate, it will be assigned to the State. Within Italian succession, there are two types of kinship, direct kinship, and collateral kinship.

Direct Kinship – (father – children; grandfather – grandchildren), family members that descend directly from one another.

Collateral Kinship – (brothers and sisters; uncle – nephew). Despite having a common ascendant, family members do not descend directly from one another.

In accordance with Italian Inheritance law, family members who are entitled to be considered as an heir include:

- The spouse;
- Children (legitimate, natural and adopted);
- Legitimate ascendants (father, mother, grandfather, grandmother);
- Relatives;
- Other family members up to the sixth degree of kinship;
- The State.

“*Dritto di Precedenza*” (Precedence by Proximity) assists in determining the share of the Estate to the closeness of kinship, excluding the most distant kinship members. In the case where family members are of the same degree, the Estate will be evenly split between these parties.

Within one year of death, a “*Dichiarazione di Successione*” must be submitted for either kinship procedure otherwise a fine will be issued. To ensure smooth proceedings, the assistance of an Italian legal advisor is required to prepare all necessary documents and paperwork.

4. The Testamentary Succession

“Close family members of the deceased merit special protection” is a principle that Italian inheritance law is based on. This basis ensures that the testator of the Will is unable to distribute the assets as they like and excluded “forced heirs”,

“Testamentary Succession” is known as the right of inheritance which has been fixed and determined prior to a testator’s death. The Executor of the will is able to distribute the assets of the deceased in compliance with the wishes of the deceased as outlined in the Will. The Will must be in written form and signed by the deceased in order to be valid.

In Italy, for foreign wills to be valid, they are required to be authenticated by a Notary Public and duly translated to Italian by an official translator (NAATI). In addition, in accordance with The Hague Convention (Convention de La Haye 1961), an Apostille must be placed upon same.

A Will is to be registered and granted following the death of a testator to distribute assets. The protection of family is a vital principle in the Italian succession procedure where some heirs cannot be excluded from inheritance. A forced heir will be assigned a necessary reserved quota of the deceased assets to inherit. These forced heirs include:

- Legitimate, natural, adopted children;
- Married partner; and
- Legitimate ascendants (parents - only in absence of children).

The reserved quote for forced heirs is outlined below:

Heirs	Reserved quota (legitimate quota)	Available Quota
Spouse	$\frac{1}{2}$	$\frac{1}{2}$
Spouse and 1 child	$\frac{1}{3}$ spouse, $\frac{1}{3}$ child	$\frac{1}{3}$
Spouse and 2 or more children	$\frac{1}{4}$ spouse, $\frac{1}{2}$ children	$\frac{1}{4}$
Spouse and ascendants	$\frac{1}{2}$ spouse, $\frac{1}{4}$ ascendants	$\frac{1}{4}$
1 child	$\frac{1}{2}$	$\frac{1}{2}$
2 or more children	$\frac{2}{3}$	$\frac{1}{3}$
Ascendants	$\frac{1}{3}$	$\frac{2}{3}$
Spouse, ascendants and brothers and sisters	$\frac{1}{2}$ spouse, $\frac{1}{4}$ ascendants	$\frac{1}{4}$
Spouse and brothers and sisters	$\frac{1}{2}$ spouse	$\frac{1}{2}$
Ascendants and brothers and sisters	$\frac{1}{3}$ ascendants	$\frac{2}{3}$
Brothers and sisters	/	All assets

5. Succession Law and Marital Status

Different provisions apply to different cases under Italian legislation in relation to marriage and partnership, illustrated in the table below:

Regime	Qualification
Communion of assets	The surviving spouse inherits the undivided half of all assets included in the communion – excluding anything that has been received as a gift or through inheritance by one of the spouses.
Separation of assets	Exclusively assets in the deceased name are only taken into consideration. If there is a house or bank accounts in the name of the deceased at 50% or 100%, that value will be inherited by the spouse.
Separation by mutual consent	The surviving spouse keeps all the rights over assets.
Spouse married but under judicial separation	At the time of legal separation should the spouse be granted a monthly maintenance payment, he/she will be entitled to retain a lifelong monthly payment, given their economic circumstances do not change and there are sufficient assets.
Divorce	As long as the Decree Absolute is issued prior to the death, the surviving spouse loses all rights to inheritance.
De-facto/Common-law Partnership	Italian law does not recognise unmarried partners. It is vital that if you want your de-facto/common-law partner to inherit you write them into your will.

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