



## How does Italian law regulate Inheritance?

The Italian Law no.218, dated 31<sup>st</sup> of May 1995, regulates the field of inheritance law in the framework of international private law. ([Italian Inheritance Law](#))

The succession regulations are determined according to the national law of the deceased at the moment of his/her death. Furthermore the Italian rules on conflict of laws take into account the possibility that the national law of a deceased foreigner might refer to the law of another country. Such deferment will be effective only if the law of the third State accepts the deferment. Let's take an example: if a British citizen before his/her death left some properties in Italy, the succession will be regulated by the British law. But according to the British "conflict law", the law to be applied should be the "lex rei sitae" (namely the law of the country where the property is located), that is to say the Italian law.

The Italian legislator adopted the principle of "unity of inheritance", which differs significantly from the one adopted in common law countries. It is based on the separation between non-property assets and property assets, and provides for that the law of the last domicile or last citizenship of the deceased party has to be applied to non-property assets, while the so called "lex rei sitae" (as above defined) is applied to property assets. According to this principle, if the hereditary asset comprises properties located in different states, the succession of each single property could be regulated by the law of the country where the property is located.

The testator has the right to submit his succession to the law of the country where he resides. Such choice has to be formally expressed in a Will and shall not be damaging for the rights provided by the Italian law for the "legittimari", or "forced heirs", (that is to say, the family members who have a statutory right to receive a fixed share of the property of the deceased, even against the will) who are resident in Italy at the moment of death of the deceased. Please also consider that both married partners and separated partners have precisely the same rights, while the divorced partners cannot argue any kind of assets.

It is highly desirable to draft an [Italian Will](#) and probate with the assistance of an Italian lawyer in order to limit the consequences of the "legal succession". In point of fact, in absence of a Will, the "legal succession" will be applied, and in such cases the Italian law determines which relatives of the deceased have the right to succeed (primarily the spouse, the legitimate and natural children, and the ascendants). In case of lack of heirs, according to the Italian law, the hereditary assets present in Italy would be assigned to the Italian State.

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