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RECIPROCAL RENUNCIATION OF THE STATUS OF LEGITIMATE HEIR: A REALITY SINCE 2018

Until 2018, Portuguese law did not allow spouses to renounce their position as legitimate heirs in each other's succession, and any prenuptial agreement providing for such renunciation was considered null and void.

With the entry into force of Law No. 48/2018 of 14 August, it became possible to stipulate in a prenuptial agreement the reciprocal waiver of the status of legitimate heir, provided that the spouses intend to marry under the regime of separation of property, whether conventional or mandatory.

What does this waiver consist of?

- The waiver is only valid if it is reciprocal, i.e. both spouses must waive their rights.
- It can be made conditional, for example, by making the waiver conditional on the survival or non-survival of heirs of any class. In this case, the condition does not have to be reciprocal.
- The waiver does not affect the surviving spouse's right to maintenance or death benefits.
- Even if they have waived their rights, the surviving spouse retains special rights over the family home that belonged to the deceased spouse:
 - They may live there for 5 years after the death of their spouse, or for life if they are over 65 years of age;
 - This right does not apply if they own a house in the same municipality (or in neighbouring municipalities, in the cases of Lisbon and Oporto);
 - They also have the right of first refusal in the event of the sale of the property, while they are living there.

How should this be done?

The waiver is only valid if it is included in the prenuptial agreement, drawn up before the marriage, and registered at the Civil Registry Office. It is not possible to subsequently amend prenuptial agreements outside the situations provided for by law, although the waiver may be revoked under the terms of the law.



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Despite the waiver, spouses may mitigate its effects through gifts, either by donation during their lifetime or by testamentary disposition. The waiver does not therefore prevent one spouse from benefiting the other, provided that the value attributed does not exceed the amount that would correspond to the legitimate portion if there had been no waiver.

This legislative amendment responds to an increasingly prevalent social reality: the celebration of second marriages and the concern to safeguard the inheritance rights of children from previous relationships, without completely removing the protection of the surviving spouse.

**Catarina Alves
Margarido**
Lawyer



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