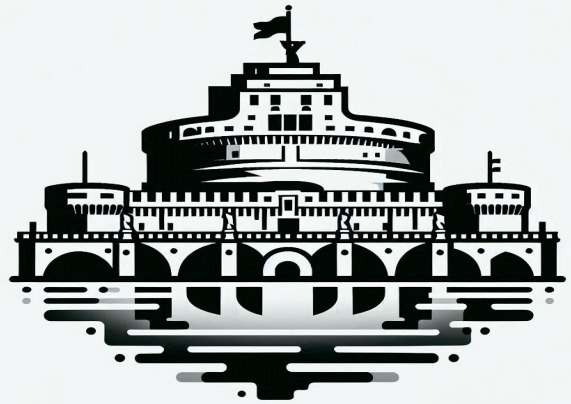


ITALIAN WILLS



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ITALIAN WILLS



Italian and English wills diverge fundamentally due to their legal systems: Italy's civil law enforces **forced heirship** (reserved shares for close relatives), while common law prioritizes **testamentary freedom** and permits reciprocal arrangements. The formalities of each country as to what makes a Will or its contents valid or invalid vary greatly.

Types of Wills in Italy

Italian law recognizes three primary will formats, each with distinct formal requirements:

1. Holographic Will

Format: Entirely handwritten, dated, and signed by the testator.

Advantages: Simple, private, and cost-effective.

Risks: Vulnerable to challenges over authenticity or compliance with formalities.

2. Public Will

Process: Drafted by a notary in the presence of two witnesses.

Benefits: Legally secure, registered in the General Register of Wills, and less prone to invalidity disputes.

Use Case: Ideal for complex estates or to ensure compliance with forced heirship rules.

3. Secret Will

Structure: Written by the testator (or a third party) and presented to a notary in a sealed envelope.

Trade-offs: Privacy is maintained, but validity cannot be verified until after death.

Common Pitfalls when drafting an Italian Will

1. Forced Heirship Non-Compliance

Italian law reserves portions of the estate for *legittimari*:

- . **Spouse**: 50% of the estate if there are no children
- **Children**: At least 50% divided equally among them.
- **Parents**

Failure to account for these shares may renders an Italian will partially invalid, triggering *successione necessaria* (mandatory redistribution). For example, a UK national's will leaving Italian property solely to non-heirs may, in certain circumstances, be deemed invalid. In this case a court may require the spouse or children to receive their statutory shares, overriding the document.

2. Formal requirements are different between England and Italy

English and Italian Wills have very different formalities. For example:

- Witnesses – An English Will may be deemed invalid if it does not have at least two witnesses whereas an Italian Will may be deemed invalid if anyone witnesses the signature.
- Depending on the type, an Italian Will is subject to certain drafting requirements (e.g. a holographic will must be handwritten).

3. Disposing of Foreign Real Estate

Attempting to dispose of Italian real estate assets under an English law risks partial invalidity.

4. Mutual Wills and Cross-Jurisdictional Conflicts

Attempting to enforce English-style mutual wills in Italy risks total invalidity. Article 458 of the Civil Code annuls wills with reciprocal conditions or interdependence. A 2023 Supreme Court ruling (*Cassazione*) nullified spousal mutual wills for creating an impermissible "succession pact".

5. Tax and Probate Delays

Inheritance Tax: Italian taxes (4–8% for spouses/children; 6–8% for siblings) apply to non-residents' Italian assets. Missteps in estate planning can increase liabilities.

Probate Complexity: English wills require translation, notarial authentication, and dual probate processes, delaying asset distribution and risking missed tax deadlines.

Conclusion: Mitigating Risks Through Strategic Planning

For individuals with Anglo-Italian ties, dual wills—tailored to each jurisdiction—are critical to avoid forced heirship overrides, tax penalties, and probate delays. Key recommendations include:

Draft Separate Wills: Ensure Italian assets are governed by an Italian will and UK assets by an English will, explicitly excluding cross-jurisdictional revocation. **Avoid mutual or reciprocal clauses**, as these are void under Italian law.

Engage Bilingual Legal Counsel: Lawyers versed in both systems can harmonize estate plans, preempt *legittimari* claims, and identify conflicts (e.g., mutual wills valid in the UK but prohibited in Italy).