

NATIONAL LEGISLATION: PORTUGAL

CHAPTER II AFFILIATION EFFECTS

SECTION I GENERAL PROVISIONS

Article 1874: Duties of parents and children

1. Parents and their children have the duty to mutually respect, help and provide assistance to one another.
2. The duty to provide assistance entails the obligation to provide nourishment and, during life in common and in accordance with their own resources, contribute to household expenses.
(Text of Decree-Law 496/77, of 25 November)

Article 1875: The child's name

1. The child will use his father's and his mother's surname or only one of them.
2. The choice of the forename and surnames is the parents' duty; in the absence of an agreement, it will be up to the judge to decide in accordance with the child's interests.
3. If maternity or paternity is established subsequently to the registration of the birth, the child's surnames may be altered as prescribed previously in this article.
(Text of Decree-Law 496/77, of 25 November)

Article 1876: Attributing the surname of the mother's husband

1. When paternity has not been established, the surname of the mother's husband may be attributed to the underage child if the mother and her husband declare it to be their will before the registration official.
2. In the two years subsequent to the majority or emancipation, the child may request that the surname of his mother's husband be deleted from its name.
(Text of Decree-Law 496/77, of 25 November)

SECTION II CUSTODY

SUBSECTION I GENERAL PRINCIPLES

Article 1877: Duration of custody

Children are subject to custody until reaching the age of legal majority or being emancipated.

(Text of Decree-Law 496/77, of 25 November)

Article 1878: Content of custody

1. It is the parents' duty, in the interests of their children, to protect and guarantee their safety and health, to maintain and support them, to manage their education, to represent them, even before their being born, and to administer their property.

2. Children have the duty to obey their parents. The latter may, however, and depending on their children's maturity, take their opinion into consideration in relation to important family matters and grant them autonomy in the running of their own lives.

(Text of Decree-Law 496/77, of 25 November)

Article 1879: Expenses with the maintenance, safety, health and education of children

Parents will no longer be obliged to maintain their children and support the expenses related to their safety, health and education in so far as the children are in a position to support those expenses by means of the product of their work or other income.

(Text of Decree-Law 496/77, of 25 November)

Article 1880: Expenses with adult or emancipated children

If at the moment of reaching the age of legal majority or being emancipated, the child has not yet completed his or her professional education, the obligation referred to in the previous number will be maintained in so far as it may be deemed reasonable to demand its fulfilment from the parents for the period of time normally required for the education to be completed.

(Text of Decree-Law 496/77, of 25 November)

Article 1881: Power of representation

1. The power of representation includes the exercise of all the rights and the fulfilment of all the obligations of the child, except for the performing of purely personal acts, which the minor is entitled to perform personally and freely, and the acts related to property which is not under the parents' administration.

2. If there is a conflict of interests whose resolution depends on public authority, between a parent and the child subject to custody, or between the children, even if one of them is adult, the underage children will be represented by one or more special guardians appointed by the court.

(Text of Decree-Law 496/77, of 25 November)

Article 1882: Impossibility of renouncing

Parents may not renounce custody; neither may they renounce any of the rights specially entrusted to them by custody without prejudice to the provisions made in this code concerning adoption.
(Text of Decree-Law 496/77, of 25 November)

Article 1883: Child conceived out of wedlock

A parent may not bring into the matrimonial home any child conceived during the marriage who is not the child of his or her spouse without his or her consent.

(Text of Decree-Law 496/77, of 25 November)

Article 1884: Maintenance of the mother

1. The father who is not united by matrimony to the mother of his child is obliged as from the date of the ascertaining of paternity to pay maintenance in relation to the period of pregnancy and the first year of his child's life without prejudice to any compensation that she may be entitled to by law.

2. The mother may claim maintenance within the lawsuit that investigates the paternity and has a right to provisional maintenance, if the lawsuit was filed before the end of the deadline referred to in the previous paragraph of this article provided that the court deems the paternity likely to be acknowledged.

(Text of Decree-Law 496/77, of 25 November)

SUBSECTION II CUSTODY REGARDING THE CHILDREN

Article 1885: Education

1. It is the parents' duty, according to their capacities, to promote the physical, intellectual and moral development of their children.

2. Parents should provide their children, and in particular the ones with a physical or mental handicap, with appropriate general and professional education, which should correspond as much as possible to their personal aptitudes and inclinations.

(Text of Decree-Law 496/77, of 25 November)

Article 1886: Religious education

It is up to the parents to decide upon the religious education of their children under sixteen years of age.

(Text of Decree-Law 496/77, of 25 November)

Article 1887: Leaving the family home

1. Underage children may not leave their parents' house or the house that their parents have assigned to them, nor may they be removed from it.

2. If the children leave their parents' house or if they are removed from it, either parent or, in case of emergency, the people to whom the children have been entrusted, may demand their return by appealing to the court or to the competent authority.

(Text of Decree-Law 496/77, of 25 November)

Article 1887-A: Socialising with siblings and grandparents

Parents may not unjustifiably prevent their children from socialising with their siblings and grandparents.

(Added by Law 84/95, of 31 August)

SUBSECTION III CUSTODY IN RELATION TO CHILDREN'S PROPERTY

Article 1888: Exclusion from administration

1. Parents may not administer:

a) The child's property that results from succession from which the parents have been excluded by reason of being unworthy or barred from succession.

b) The property the child has inherited or been bequeathed against his or her parents' will.

c) Property bequeathed to the child that was excluded from his or her parents' administration.

d) Property acquired by the child who is sixteen or more years of age as a product of his or her work.

2. Exclusion from administration, in accordance with paragraph c) of the previous number, is

permitted even over property that the child has acquired as non-disposable portion.

(Text of Decree-Law 496/77, of 25 November)

Article 1889: Acts whose validity is dependent on the authorisation of the court

As representatives of the child, the parents may not, without the permission of the court:

Dispose of property or burden it with obligations, except when the disposal of property against payment concerns things susceptible to loss or deterioration;

Vote, in general meetings of firms, resolutions that entail their dissolution;

Acquire a commercial firm or an industrial enterprise, or continue benefiting from what the child has inherited or received as gift;

Enter into general partnership, secret partnership, or partnership association;

Take on bills or obligations resulting from any bond transmissible by endorsement;

Guarantee or take on other people's debts;

Take out loans;

Take on obligations whose fulfilment is to take place after the minor reaches the age of legal majority;

Assign claims;

Renounce an inheritance or a legacy;

Accept an inheritance, a gift or a legacy that have obligations, or enter into extrajudicial partition;

Lease property for a period of time in excess of six years;

Agree on, or request in court, the division of joint property or the liquidation and partition of a company's assets;

Negotiate a settlement or commit to arbitration concerning the acts referred to in the previous paragraphs or negotiate an agreement with creditors.

2. The investment of the minor's money or capital in acquiring property is not deemed to be included in paragraph a) of the previous number.

(Text of Decree-Law 227/94, of 8 September)

Article 1890: Accepting or renouncing gifts

1. If an inheritance or a legacy is bequeathed to the child or a gift that requires acceptance is proposed, the parents must accept it when they are legally capable of doing so or, within thirty days, request the permission of the court to accept or renounce the inheritance, legacy or gift.

2. If thirty days after the beginning of the succession or the proposing of a gift, the parents have taken no steps, the child, or any of his or her relatives, the Public Prosecutor's Office, the donator, or any interested party, may request that the court notifies the parents to comply with the provisions laid down in the previous number, within the time limit specified by the court.

3. If the parents make no statement within the prescribed period, the gift is deemed to be accepted, except when the court decides that the child's interests will be best served by renouncing it.

4. In the proceedings in which the parents request court approval for the acceptance of the inheritance, whenever that approval is required, they may request authorisation to agree on the extrajudicial partition of the inheritance as well as on the appointment of a special guardian. The guardian is to represent the minor child in the succession whenever the parents apply to the succession alongside the minor or when they represent several legally incompetent heirs.

(Text of Decree-Law 227/94, of 8 September)

Article 1891: Appointing a special guardian

1. If the minor has no legal representative, any of the persons mentioned in no.2 of the previous article may request that the court appoints a special guardian for the purpose stipulated in no. 1 of the same article.

2. When the court does not give the parents permission to renounce the gift, an official guardian will also be appointed for the purpose of its acceptance.

(Text of Decree-Law 496/77, of 25 November)

Article 1892: Prohibition on acquiring property of the child

1. Without court authorisation, the parents may not, themselves or through a third party, take on lease or acquire property or rights belonging to the child in their custody, not even when those rights or property are auctioned. Neither may they be assignees of debts or other rights against the child, except when there is legal subrogation, invitation to bid in an inventory, or granting in division of property authorised by the court.

2. The acquisition is deemed to be undertaken by a third party in the cases referred to in no. 2 of article 579.

(Text of Decree-Law 227/94, of 8 September)

Article 1893: Voidable acts

1. Acts committed by parents in breach of what is stipulated in articles 1889 and 1892 are voidable at the request of the child, up to one year after his or her reaching the age of legal majority or being emancipated or, in case he or she should pass away, at the request of his or her heirs, except for the parents who have custody, within one year after the death of the child.

2. The annulment may be requested after the end of the time limit, if the child or his or her heirs show that the acts whose validity is disputed only came to their knowledge sometime during the six months prior to the suit being filed.

3. The annulment suit may also be filed by the persons who have legitimacy to request the inhibition of custody, provided they do so in the year subsequent to the acts whose validity is disputed having been committed, and before the minor child reaches the age of legal majority or is emancipated.

(Text of Decree-Law 496/77, of 25 November)

Article 1894: Approval of the deeds by the court

The court may approve the deeds committed by the parents without the required authorisation.

(Text of Decree-Law 496/77, of 25 November)

Article 1895: Property belonging to the parents

1. Parents own the property that their minor child living with them produces as a result of work done by him or her for the parents and with the means or capital that belong to the latter.

2. The parents should give the child a part of the property produced or compensate him or her for his or her work. However, the fulfilment of this duty may not be requested in court.

(Text of Decree-Law 496/77, of 25 November)

Article 1896: Income from the child's property

1. Parents may use the income from their child's property to meet his or her maintenance, safety, health, and education expenses as well as other family expenses, within acceptable limits.

2. When only one parent has custody, it is up to him or her to use the child's income as stipulated in the previous number.

3. The use of income resulting from property that the child inherited as non-disposable portion may not be excluded by the donator or testator.

(Text of Decree-Law 496/77, of 25 November)

Article 1897: Exercising administration

Parents should administer their children's property as carefully as they do their own.

(Text of Decree-Law 496/77, of 25 November)

Article 1898: Presenting surety

1. Without prejudice to the provisions of article 1920, parents are not obliged to present surety as administrators of their child's property, except when the child inherits movable property and, on estimating the property's value, the court deems it necessary for surety to be presented at the request of people who have legitimacy to file suit requesting the inhibition of custody.

2. If the parents do not present the surety required by court, the provisions of article 1470 are applicable.

(Text of Decree-Law 496/77, of 25 November)

Article 1899: Exemption from rendering account

Parents are not obliged to render account of their administration, without prejudice to the provisions of article 1920.

(Text of Decree-Law 496/77, of 25 November)

Article 1900: End of administration

1. Parents should return to their child his or her property, as soon as he or she reaches the age of legal majority. When due to any other reason, custody or administration cease, the child's property should be returned to his or her legal representative.

2. Movable property should be returned in the condition it is. If the movable property no longer exists, the parents must pay its equivalent in money, except if the property was consumed through use common to the child or if it perished by reason non-ascribable to the parents.
(Text of Decree-Law 496/77, of 25 November)

SUBSECTION IV EXERCISING CUSTODY

Article 1901: Custody in wedlock

1. In wedlock, custody is shared by the parents.
2. Parents should agree on the exercising of parental rights, and when agreement fails on issues of special importance, either parent may resort to court, which will attempt conciliation. When this proves impossible, and before making a decision, the court will hear the child who is fourteen or over fourteen years of age, except when weighty circumstances advise otherwise.
(Text of Decree-Law 496/77, of 25 November)

Article 1902: Acts committed by one of the parents

1. If one of the parents commits an act that integrates the exercising of parental rights, it is presumed that he or she is acting in agreement with the other parent, except when the law expressly requires the consent of both parents or when it is an act of special importance. The absence of agreement may not be used against a third party who acts in good faith.
2. The third party should refuse to intervene in the act committed by one of the spouses when, in accordance with what is stipulated in the previous number, the agreement of the other spouse may not be presumed or when his or her opposition to the act is known.
(Text of Decree-Law 496/77, of 25 November)

Article 1903: Impediment of one of the parents

When one of the parents may not exercise custody due to absence, incapacity or any other impediment, it is up to the other parent to exercise parental rights alone.
(Text of Decree-Law 496/77, of 25 November)

Article 1904: Being a widow or widower

After the marriage has been dissolved by the death of one of the spouses, custody belongs the surviving spouse.
(Text of Decree-Law 496/77, of 25 November)

Article 1905: Divorce, judicial separation of spouses and property, declaration of nullity or annulment of the marriage

1. In the case of divorce, judicial separation of persons and property, declaration of nullity or annulment of the marriage, the future of the child, maintenance and its form, will all be regulated by an agreement between the parents, subject to the approval by the court. Approval will be denied when the agreement does not serve the interests of the underage child, the interest of the child being in close contact with the parent who does not have custody being included.

2. In the absence of agreement, the Court will rule safeguarding the interests of the underage child, including that of keeping close contact with the parent who does not have custody. The child may be entrusted to either parent or, whenever any circumstance referred to in article 1918 occurs, to a third person or to a re-education or welfare institution.

(Text of Law 84/95, of 31 August)

Article 1906: Custody in case of judicial separation of spouses and property, declaration of nullity or annulment of the marriage

1. Providing the parents reach an agreement, custody is exercised by both of them, deciding the issues that regard the child's life in circumstances similar to those that characterise wedlock.

2. In the absence of such an agreement, the court will decide that custody is exercised by the parent to whom the child is entrusted.

3. Parents may also agree on some issues being decided by both of them or on the administration of the child's property being the responsibility of the parent to whom the child has not been entrusted.

4. The parent who does not have custody is entitled to oversee the child's education and his or her living conditions.

(Text of Law 59/99, of 30 June)

Article 1907: Exercising custody when the child is entrusted to a third person or a re-education or welfare institution

1. When the child is entrusted to a third person, or a re-education or welfare institution, they have the rights and duties that the parents usually have, in conformity with the adequate discharge of their duties.

2. The court will decide which parent should have custody in the part not stipulated by the previous number.

(Text of Decree-Law 496/77, of 25 November)

Article 1908: Survival of the parent to whom the child has not been entrusted

When any of the circumstances referred to in article 1918 occur, the court, on ruling who is to have custody, may also decide that if the parent to whom the child has been entrusted should die, the custody is not to be devolved on the surviving parent; the court will thus appoint the person to whom the underage child must temporarily be entrusted.

(Text of Decree-Law 496/77, of 25 November)

Article 1909: Separation of spouses

The provisions of articles 1905 to 1908 are applicable to separated spouses.
(Text of Decree-Law 496/77, of 25 November)

Article 1910: Affiliation established as regards only one of the parents

If the affiliation of a child born out of wedlock is established as regards only one of the parents, custody belongs to that parent.
(Text of Decree-Law 496/77, of 25 November)

Article 1911: Affiliation established as regards both parents out of wedlock

1. When affiliation is established as regards both parents and they have not entered into marriage after the birth of the child, custody belongs to the parent in whose care the child is.
 2. For the purpose of the previous number, the mother is presumed to have the child in her care; this presumption may only be proven wrong in court.
 3. When the parents live as husband and wife, custody belongs to both of them if they state so before the civil registry's official; in this case, and with the necessary adjustments, the provisions of articles 1901 to 1904 are applicable.
- (Text of Decree-Law 496/77, of 25 November)

Article 1912: Regulating the exercising of custody

With the necessary adjustments, the provisions of articles 1904 to 1907 are applicable to the case referred to in the previous number.
(Text of Decree-Law 496/77, of 25 November)

**SUBSECTION V
INHIBITION AND RESTRICTIONS TO THE EXERCISING OF
CUSTODY**

Article 1913: Full inhibition

1. Full inhibition from the exercising of custody affects those who:
 - a) have been sentenced by a crime to which the law assigns such an effect;
 - b) are legally incompetent by psychical motifs;
 - c) are absent, as from the appointment of an interim guardian.
 2. Non-emancipated minors or legally incompetent persons not referred to in paragraph b) of the previous number, are deemed to be fully inhibited from representing their children and administering their property.
 3. Court rulings that entail inhibition of the exercising of custody are, as soon as they transit *in rem judicatam*, imparted to the competent jurisdiction so that the measures required by that particular case are taken.
- (Text of Decree-Law 496/77, of 25 November)

Article 1914: Cessation of the inhibition

Full inhibition of the exercising of custody ceases when the incompetence is lifted and the guardianship comes to its end.

(Text of Decree-Law 496/77, of 25 November)

Article 1915: Inhibition of the exercising of custody

1. On the request of the Public Prosecutor's Office, of any of the relatives of the underage child or of the person in whose care the underage child is, the court may decree the inhibition of the exercising of custody when either the father or the mother breaches his or her duties towards their children, and, in doing so, seriously damages their interests, or when out of inexperience, sickness, absence or other reasons, he or she proves to be unfit for the discharge of his or her duties.

2. The inhibition may be total or restricted to the representation and administration of the children's property; it may apply to both parents or to only one of them, and it may affect all the children, one or more than one child.

3. Unless stipulated otherwise, the effects of the inhibition affecting all the children extend to those who are born after the inhibition has been decreed.

(Text of Decree-Law 496/77, of 25 November)

Article 1916: Lifting of the inhibition

1. The inhibition of the exercising of custody decreed by the court will be lifted when the causes that originated it cease to exist.

2. The lifting may requested by the Public Prosecutor's Office, at any time, or by either parent, one year after the sentence of inhibition, or any other sentence that did not grant a request for the lifting of the inhibition, has transited *in rem judicatam*.

(Text of Decree-Law 496/77, of 25 November)

Article 1917: Maintenance

The inhibition of the exercising of custody does not, any under circumstance, exempt the parents from the duty to maintain their children.

(Text of Decree-Law 496/77, of 25 November)

Article 1918: Risks to the safety, health, moral development and education of the child

When the safety, health, moral development and education of a child are at risk, and inhibition of custody is not applicable, on the request of the Public Prosecutor's Office, or of any of the persons referred to in no. 1 of article 1915, the court may decree the necessary protective measures, notably that the child be entrusted to a third person, to an educational or welfare institution.

(Text of Decree-Law 496/77, of 25 November)

Article 1919: Exercising of custody pending the protective measures

1. When any of the protective measures referred to in the previous article has been decreed, the parents maintain custody in all aspects that are not irreconcilable with those measures.

2. If the underage child has been entrusted to a third person or to an educational or welfare institution, a system of visitation rights of the parents will be established, except when the child's interests advise otherwise.

(Text of Decree-Law 496/77, of 25 November)

Article 1920: Protection of the child's property

1. When poor administration places the child's assets at risk, and inhibition of custody is not applicable, on the request of the Public Prosecutor's Office or of any relative, the court may decree the protective measures that it deems fit.

2. Taking the assets' value into special consideration, the court may require that account and information are rendered about the administration and state of the child's assets; when these measures prove to be inadequate, the court may order that surety be presented.

(Text of Decree-Law 496/77, of 25 November)

Article 1920-A: Revoking or altering decisions

The decisions that decree protective measures under articles 1918 to 1920 may be revoked or altered by the same court, at any time, on the request of the Public Prosecutor's Office or of either parent.

(Text of Decree-Law 496/77, of 25 November)

SUBSECTION VI REGISTERING DECISIONS CONCERNING CUSTODY

Article 1920-B: Compulsory registration

The decisions that must be officially imparted to the civil registry's office so as to be legally registered are as follows:

- a) Decisions that regulate the exercising of custody or approve the agreement about such exercising;
- b) Decisions that approve the reconciliation of spouses that were judicially separated in persons and property;
- c) Decisions that cease the regulating of custody in the case of reconciliation of separated spouses;
- d) Decisions that entail the inhibition or the temporary suspension of the exercising of custody, or that establish protective measures restricting that custody.

(Text of Decree-Law 496/77, of 25 November)

Article 1920-C: Consequences of the absence of registration

Court decisions referred to in the previous article may not be used against a third party that acts in good faith until they have been registered.
(Text of Decree-Law 496/77, of 25 November)

SECTION III MEANS TO SUPPLY CUSTODY

SUBSECTION I GENERAL PROVISIONS

Article 1921: Underage children under guardianship

1. The underage child is placed under guardianship whenever:
 - a) his or her parents have died;
 - b) his or her parents have been inhibited from custody as regards the governing of the child;
 - c) his or her parents have been barred from exercising custody for over six months;
 - d) his or her parents are unknown.
2. The parents being barred from custody, the Public Prosecutor's Office will take the protective measures necessary for the child's safeguard, irrespective of the time limit referred to in paragraph c) of the previous number. It may also promote the appointment of a person who, on behalf of the child, celebrates legal acts of an urgent nature or acts from which the child will clearly benefit.

Article 1922: Administering property

The child's property will be administered in accordance with the system prescribed in articles 1967 and subsequent ones:

- a) When the parents have been excluded, inhibited or suspended from administering all or part of the assets belonging to the legally incompetent child, and if no administrator has been appointed;
- b) When the competent authority to appoint a guardian entrusts the administration of all or part of the child's assets to someone else.

Article 1923: Official nature of guardianship and administration

1. When any of the circumstances stipulated in the previous articles affects the underage child, the family court must officially promote the appointment of a guardian or an administrator.
2. Any administrative or judicial authority as well as any civil registry's officials, who, in performing their duties, acquire knowledge of such circumstances, must report the fact to the competent court.

Article 1924: Guardianship and administration bodies

1. Guardianship is exercised by a guardian and by the family council.

2. The administration of property is exercised by one or more administrators and, if guardianship has been decreed, by the family council.

Article 1925: Competence of the family court

1. Both the guardianship and the administration of property are carried out under the supervision of the family court.

2. In addition to other assignments stipulated by law, and depending on the case, the family court is responsible for approving or appointing guardians, administrators and members of the family council.

Article 1926: Compulsory nature of guardianship functions

The office of guardian, administrator of property, and member of the family council, are compulsory, no one being excused from them except in the cases prescribed by law.