

Grounds for disinheriting your child in Catalonia

Disinheriting a child is a legally delicate decision. In Catalonia, it is not enough for there to be a poor family relationship, a one-off argument or the desire to favour other heirs. For the disinheritance to be valid, there must be a specific legal ground and it must be carried out in accordance with the requirements set out in the Catalan Civil Code.

Catalan law allows a child to be deprived of their forced heirship portion, but only in certain cases. Therefore, before including a disinheritance clause in a will, it is important to understand what disinheritance means, who is entitled to the forced heirship portion and what grounds are legally accepted.

WHAT DOES DISINHERITING MEAN?

Disinheriting means depriving a forced heir of their right to the forced heirship portion. In the case of children, this means preventing them from claiming the minimum share of the estate that the law recognises in their favour.

Disinheriting should not be confused with not appointing someone as heir. A person may decide in their will that their assets should pass to a specific person, to another child, to their spouse or to a third party. However, if there are children entitled to a forced heirship portion, they may claim it unless they have been validly disinherited, have waived it, or another legal ground extinguishing their right applies.

In Catalonia, the forced heirship portion does not amount to the entire estate. As a general rule, it represents one quarter of the calculation base of the estate, which is divided among the forced heirs entitled to it. Therefore, disinheriting a child does not simply mean not leaving them assets in the will, but expressly depriving them of this minimum right recognised by law.

FORCED HEIRS: WHY IT IS NOT POSSIBLE TO DISINHERIT FREELY

The Spanish Civil Code uses the concept of “forced heirs” to refer to the people for whom the law reserves a share of the estate, known as the forced heirship portion. These include, first and foremost, children and descendants in relation to their parents and ascendants.

In Catalonia, the regulation is separate and the Catalan Civil Code mainly uses the term “forced heirs”. Under Catalan law, all children of the deceased are forced heirs in equal shares. If any of them has predeceased the deceased, has been validly disinherited, has been declared unworthy or is absent, their descendants may represent them by stirpes.

This means that a father or mother may freely arrange their succession, but they cannot simply eliminate their children’s right to the forced heirship portion. To deprive a child of that right, there must be a legal ground for disinheritance and the testator’s intention must be properly expressed.

REQUIREMENTS TO DISINHERIT A CHILD IN CATALONIA

Disinheritance must be made in a will, codicil or succession agreement. In addition, one of the grounds provided by law must be stated and the disinherited child must be named individually.

Catalan law also establishes that disinheritance cannot be partial or conditional. Therefore, it is not valid to disinherit someone “halfway” or to make the disinheritance depend on a future condition.

It is also important to consider evidence. If the disinherited child challenges the disinheritance and denies the existence of the alleged ground, it will be for the heirs to prove that such ground existed. For this reason, it is not enough to copy a generic formula into the will: the ground should

be properly identified and there should be elements that make it possible to prove it if it is later disputed in court.

GROUND FOR DISINHERITING A CHILD IN CATALONIA

The Catalan Civil Code provides for five legal grounds for disinheritance. Outside these cases, the disinheritance may be considered unjust and the child could claim the forced heirship portion to which they are entitled.

1. GROUNDS OF UNWORTHINESS TO INHERIT

The first ground for disinheritance is the existence of a ground of unworthiness to inherit. Unworthiness refers to particularly serious conduct that makes a person undeserving of inheriting from the deceased.

The Catalan Civil Code includes within these grounds cases such as having been convicted of intentionally killing or attempting to kill the deceased, their spouse or stable partner, or certain close relatives. It also includes convictions for serious offences against freedom, moral integrity or sexual freedom where the victim is the deceased or a person from their close family environment.

In addition, grounds of unworthiness may exist in cases of serious slander, false testimony against the deceased, offences against family rights and duties, or conduct aimed at manipulating the testator's testamentary wishes. For example, maliciously inducing the deceased to make, revoke or amend a will, preventing them from doing so, or destroying, hiding or altering their testamentary provisions.

In practice, this ground is intended for particularly serious situations. It does not refer to ordinary family disputes, but to behaviour that directly affects the dignity, freedom, security or testamentary wishes of the testator.

If this ground is used in a will, it is advisable to specify the facts justifying the disinheritance and to keep the documentation that may prove them, such as court decisions, complaints, judgments or any other relevant evidence.

2. REFUSAL TO PROVIDE MAINTENANCE

Another legal ground for disinheritance is that the child has refused to provide maintenance to the testator, their spouse or stable partner, or to the testator's ascendants or descendants, provided that there was a legal obligation to provide it.

When the law refers to "maintenance", it does not refer only to food. In legal terms, maintenance includes what is essential for the support, housing, clothing and medical care of the person receiving maintenance. It may also include education expenses in the cases legally provided for.

This ground may arise, for example, when a father or mother is in a situation of need and the child, despite being legally obliged and having the capacity to help, unjustifiably refuses to do so.

However, the circumstances of each case must always be analysed. For this ground to be valid, a generic lack of help or a distant relationship is not enough. There must be a real legal obligation to provide maintenance and an unjustified refusal by the child.

Therefore, if disinheritance is sought on this ground, it is advisable to gather evidence of the situation of need, the request for help and the child's refusal. Communications, formal demands, judicial or extrajudicial claims, and financial or medical documentation may also be relevant.

3. SERIOUS MISTREATMENT

Serious mistreatment of the testator is also a ground for disinheritance in Catalonia. Catalan law does not limit this ground to mistreatment directly against the testator, but also includes serious mistreatment of their spouse or stable partner, as well as of their ascendants or descendants.

This ground requires seriousness. Not every family argument, disagreement, estrangement or lack of affection automatically justifies disinheritance. It must be serious, relevant and sufficiently provable conduct.

Mistreatment may take different forms, but what matters is that the conduct is serious enough to justify deprivation of the forced heirship portion. In this regard, vague wording such as “for bad behaviour” or “for a bad relationship” should be avoided, as it may cause problems if the disinherited child challenges the will.

To strengthen this ground, it is advisable to describe the facts precisely. Complaints, medical reports, psychological reports, court decisions, written communications, witnesses or other elements that make it possible to prove the existence of mistreatment may be relevant.

In practice, this ground requires particular caution. Disinheritance is a serious measure and, if the ground is not proven, the child may claim their forced heirship portion.

4. SUSPENSION OR DEPRIVATION OF PARENTAL AUTHORITY

Catalan law also allows disinheritance where there has been a suspension or deprivation of parental authority for a reason attributable to the person who has been suspended or deprived of it.

In the specific case of disinheriting a child, this ground may be relevant where that child has been suspended or deprived of parental authority over a grandchild of the testator for a reason attributable to them. In other words, where there is a decision affecting the child’s parental authority over their own child, and that situation arises from conduct attributable to the child who is to be disinherited.

It is therefore not enough for there to be a complex family situation or a loss of contact with the grandchild. There must be a suspension or deprivation of parental authority in the legally established terms and there must be a reason attributable to the person concerned.

This ground has a very technical component, so the judicial or administrative decision declaring the suspension or deprivation should be carefully analysed. It should also be checked whether the ground truly fits within the provision of the Catalan Civil Code.

In these cases, the evidence is usually based mainly on the decision ordering the suspension or deprivation of parental authority, as well as on the background to the proceedings that led to it.

5. MANIFEST AND CONTINUED ABSENCE OF A FAMILY RELATIONSHIP

One of the most characteristic grounds under Catalan law is the manifest and continued absence of a family relationship between the deceased and the forced heir, provided that such absence is exclusively attributable to the forced heir.

This ground is especially relevant in cases of family abandonment, prolonged breakdown of the bond between parents and children or a complete lack of contact for years. However, it is not enough for a parent and child not to speak to each other. The law requires the absence of a relationship to be manifest, continued and exclusively attributable to the disinherited child.

This means that three elements must be present. First, the lack of relationship must be clear and evident. Second, it must have continued over time, and not be a one-off episode. Third, the cause of that breakdown must be attributable exclusively to the child, not to the testator or to both parties.

This last requirement is the most delicate. If the lack of relationship is due to reciprocal conflicts, decisions made by the testator themselves or a family breakdown caused by both parties, the disinheritance may be challenged.

Therefore, although this ground is one of the most commonly used in practice, it is also one of those requiring the greatest evidentiary care. It is advisable to keep messages, emails, attempts to make contact, witnesses, burofaxes or any other element that may prove that the testator tried to maintain the relationship and that the absence of a bond was attributable to the child.

The wording of the will is also important. It is not advisable to simply state that “there is no family relationship”, but rather to explain, clearly and prudently, that the lack of relationship has been manifest, continued and exclusively attributable to the disinherited child.

WHAT HAPPENS IF THE CHILD CHALLENGES THE DISINHERITANCE?

The disinherited child may challenge the disinheritance if they consider that the stated ground does not exist or does not reflect reality. In that case, the burden of proving the ground lies with the heirs.

If the ground for disinheritance cannot be proven, the disinheritance will be unjust and the child may claim the forced heirship portion to which they are entitled. For this reason, prior preparation is essential.

It should also be borne in mind that reconciliation between the testator and the forced heir, if evidenced by unequivocal acts, or forgiveness granted in a public deed, may render the disinheritance ineffective. Therefore, if the family situation changes after the will has been granted, it is advisable to review the succession planning.

CONCLUSION

Disinheriting a child in Catalonia is possible, but only when there is a legal ground and the requirements set out in the Catalan Civil Code are met. A poor family relationship or the mere desire to leave the estate to another person is not enough.

There are five legal grounds: grounds of unworthiness to inherit, refusal to provide maintenance, serious mistreatment, suspension or deprivation of parental authority, and manifest and continued absence of a family relationship attributable to the child.

Before including a disinheritance clause, it is advisable to analyse the specific case, correctly identify the applicable legal ground and assess what evidence exists to defend the disinheritance if it is challenged.