



Spanish wills guide



A comprehensive guide to making a will in Spain



SPAIN

Further beyond

47 million Population

28th most populous country on earth

50 Provinces

Capital : Madrid

Currency : Euro (EUR)

Languages : Spanish, Catalan, Basque, Basque, Occitan

EUROPE



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introduction



A death of a friend or a family member is extremely difficult at the best of times - especially if you have to deal with the mechanics of the inheritance. Dealing therefore with the legal process in a different unfamiliar country only adds to that difficulty. One of the practical things to help avoid future stress and cost for your family and beneficiaries is to plan effectively and ensure that you have in place a valid Spanish Will.

When you buy a property in Spain the last thing that you normally think about is making a Spanish Will - after all there is furniture to pay for, that first trip to organize and all those sorts of exciting things. However, when you have just bought is often the best time to make your Spanish will.

Done properly a Spanish Will can not only make the lives of your beneficiaries easier during a difficult time but can also prove extremely cost effective, and will undoubtedly cost less than dealing with matters if no Spanish Will is provided.

Are the inheritance rules in Spain the same as the UK?

No, the processes are very different, but there is an interaction between them when you inherit a property in Spain. That is why the best person to advise you on your purchase in Spain is somebody who understands both Spanish and UK law.

Do I have to make a Will?

No, you don't as it is possible to deal with an inheritance that is intestate (i.e. without a Will). However, if you don't make a Will then you run the risk that your assets go to the wrong person or that the process of inheriting from you is more complicated and / or expensive than it needs to be.

Can I just leave my assets in Spain with my UK Will?

Yes you can, but this may not be the best way of dealing with your estate as the two legal systems are very different and it may be better to leave assets to different people in different countries. The cost of translating a UK Will into Spanish (which is required on an inheritance) is generally more than the cost of making a Spanish Will in the first place.

Can I have two Wills?

Most people are not aware that you can have more than one Will (for example one in the UK dealing with your UK assets and one in Spain dealing with your Spanish assets). You can have two Wills that work together providing that they are drafted well. Drafted incorrectly you might accidentally revoke the other Will.

Do I have to leave my Spanish assets to my children?

This is the most common question we get asked about Spanish Wills. In short if you are not Spanish and not resident in Spain then no, you don't. However, it might make sense to follow the same rules as a Spaniard needs to follow as this may end up being more cost effective. There is a section later on in this guide giving further advice on this

no will

You don't have to make a Will at all - either in Spain or in the UK. If you don't leave a Will then your assets will be dealt with in accordance with the rules of Intestacy. If you are resident in Spain then it will be Spanish intestacy rules that apply. The Intestacy Rules set out who should inherit from you if you haven't made a Will. Who will inherit from you will depend on a number of factors including whether you are married or in a civil partnership, whether you have children and how much your estate is worth. If you aren't married or in a civil partnership and don't have children then it may be your parents, siblings or other relatives who get your assets. If you don't have any family then the Crown gets your assets.

You may not want those people to inherit from you. By making a Will you can make sure that the right people get your assets when you die. You can also make sure that your assets are distributed in the most tax effective way.

Not having a Will may also increase the cost of an inheritance as it may be necessary to draft complicated declarations of law and obtain other documentation which otherwise may not be necessary.





It is possible to leave assets in Spain using a foreign Will as Spanish Law recognizes Wills that are made abroad. Therefore you can draft your UK Will to include your Spanish assets.

However, doing this unnecessarily increases the costs of the subsequent inheritance in terms of the costs and sometimes taxes. The reason for this is that the process becomes more difficult - each document needed needs to be translated and legalized. The cost of translating a UK Will into Spanish can run into hundreds of pounds on its own. Further to this the process slows down as we have to wait for the Grant of Probate to be issued in the UK before we can progress the inheritance in Spain, which will normally mean that the inheritance taxes are not paid in time in Spain, resulting in a fine and late payment interest.

It may be necessary to draft a Declaration of Law which confirms to the authorities in Spain that the UK Will is valid in the UK and also who the beneficiaries are. It is also often necessary to explain to the authorities in Spain how a UK inheritance works as the two systems are very different - in Spain, for example, it is the beneficiaries who inherit directly rather than using executors, administrators, trustees and the like.

Spanish wills



The easiest way of dealing with an inheritance in Spain is by using a Spanish Will. This is for several reasons. First of all the Will is made in Spanish and in the Spanish format. It will be drafted signed, witnessed and registered in accordance with Spanish law on Wills. In short it will be what the Spanish Authorities are used to and will be expecting. Because of this the authorities will know how to deal with it and therefore the whole process will be smoother than if you were using a UK Will to leave your assets. There will be less documents needed and less steps required to get to the signature of the Deed of Acceptance of Inheritance.

Secondly, because the authorities in Spain will understand the Will and the process the cost will be less. The cost of translating a UK Will into Spanish is normally more than the cost of making a Spanish Will in the first place. If a UK Will is used then it is likely that a Declaration of Law is required to explain to the Spanish Authorities how the UK Will works and how it is valid. This increases the cost of the inheritance

Thirdly if a Spanish Will is used for your Spanish assets then it will not be necessary to wait for the UK Inheritance to progress before progressing things in Spain. Leaving your assets in Spain using a UK Will would mean that we would need to wait for the UK Grant of Probate before starting the process in Spain. This in turn is likely to mean that the six month voluntary period for paying the inheritance taxes in Spain will be missed, meaning that there will be a fine for late payment and interest added on the outstanding amount. Making a Spanish Will therefore saves your beneficiaries cost and time.

The way that Inheritance Tax in Spain works is very different to the UK. Therefore the way that you leave your assets in the UK is not necessarily the best way to leave your assets in Spain. UK law tends to favor leaving your assets to your spouse whereas Spanish Law is all geared around leaving your assets to your children. This fundamental difference in the approach of Inheritance Law is reflected in the way that the Inheritance Tax works - meaning that doing what you would normally do in the UK in your Spanish Will may be appropriate.



notary public

Spanish Wills are drafted and signed in a different way to the way that they are done in the UK.

The format of the Will is different as is the style. Spain uses the Notarial system for the signature of important documents such as Title Deeds and the like.

The role of the Notary Public is essentially to make sure that you are who you are, that you understand what you are signing, to make sure that you are signing the document under your own free will and to complete certain formalities.

The Notary can be in the UK or Spain but must be able to understand the document.

Wills signed in the UK require legalization at the Foreign & Commonwealth Office

There are three types of Spanish Will;

Open Wills The most common type of Spanish Will. Signed before a Notary. The Notary reads out the document and makes sure that you understand it and that you are who you are. He witnesses the Will

Closed Wills The person granting the Will writes and signs his Will and then seals it in an envelope. He confirms before the Notary that that envelope contains his last Will. Nobody other than the person granting the Will knows it's contents

Holographic Wills The least common type of Will. It has to be hand written and is not valid if it is typed up. These Wills are not signed in front of a Notary but need to be authenticated by a Judge in Court.



The Spanish Wills system is, in some ways, superior to that in the UK. One example of this is that in Spain there is a Wills Registry where all Wills are registered. Wills Registries exist in the UK but they are run by companies and often aren't used. In Spain the majority of Wills are registered at one central Wills Registry in Madrid which is run by the government rather than private companies.

One of the documents required to carry out an acceptance of inheritance in Spain is a certificate from the Wills Registry in Madrid. This proves whether a Will was made and which is the final version of the Will (if there has been several over the years). You cannot carry out an inheritance in Spain without a Wills Registry Search.

When we help you make your Will we would make sure that your Will is registered at the Wills Registry. It is free to register so this doesn't increase the cost of making a Will. The Wills Registry is funded by a charge levied on searches.

inheritance.....

Spanish Inheritance Law states that when you die your property will be shared among your heirs according to the law of your residence unless you leave a Will stating that it should be the law of your nationality applies. It is a common misconception that as a foreigner you have to leave your assets in accordance with Spanish law, which imposes certain “forced heirs”.

A “foreigner” can make a Spanish Will leaving his own property to the person of their choice. This Will must contain a declaration that their personal law is governed by the principle of free disposition of property by testament. This is then acceptable to the Central Wills Registry in Spain. Generally speaking a valid Spanish will is sufficient to dispose of the estate as you wish.

Inheritance tax on property or assets in Spain has to be paid in Spain.

The property or assets also have to be declared back in the UK although due to Double Taxation Laws you can offset the tax paid in Spain against the tax payable in the UK.

The rate of inheritance tax payable in Spain will depend on three things;

1. The relationship between the person who died and the beneficiaries
2. The amount that each beneficiary receives
3. The individual wealth of each beneficiary
4. The autonomous region of Spain that applies

The tax is a tax on the individual beneficiaries rather than the estate as a whole.

Each Autonomous region of Spain sets its own Inheritance Tax rates and therefore also sets the tax free allowances that apply. There is a trend towards these tax free allowances to increase, meaning that even though there is no total exemption between husband and wife there is often an increasing amount that can be inherited without having to pay any tax.

The rates of Inheritance Tax in Spain for a given amount change according to the area of Spain. An example is as follows. Multipliers may also apply to these figures depending on the relationship between the parties and the wealth of the beneficiaries.

Amount	Base Tax Payable	Remainder Taxed at
Up to €7,993.46	€0	7.65%
€7,993.46	€611.50	8.50%
€15,980.91	€1,290.43	9.35%
€23,968.36	€2,037.26	10.20%
€31,955.81	€2,851.98	11.05%
€39,943.26	€3,734.59	11.90%
€47,930.72	€4,685.10	12.75%
€55,918.17	€5,703.50	13.60%
€63,905.62	€6,789.79	14.45%
€71,893.07	€7,943.98	15.30%
€79,880.52	€9,166.06	16.15%
€119,757.67	€15,606.22	18.70%
€159,634.83	€23,063.25	21.25%
€239,389.13	€40,011.04	25.25%
€398,777.54	€80,655.08	31.75%
€797,555.08	€207,266.95	36.50%

fees and costs

Our charges. For a simple Spanish Will we charge £395 Plus VAT. That should cover the majority of typical cases. For two “Mirror” Wills the total cost is £595 plus VAT

More complicated structures may require more work than a typical Will and will therefore cost more.

We would give an estimate for this cost prior to instruction.

There is going to be various fees that will need to be paid on top of our fees;

Notary fees - Typically €1000 if signed in Spain and £150 if signed in the UK

Legalisation fees - £30 per Will

Wills Registry fees - Free

Our charges include;

- **Taking your instructions on what you want to happen with your assets**
- **Advising you whether your proposed course of action is legal and whether it seems sensible**
- **Drafting your Will**
- **Making arrangements for you to sign the Will**
- **Registering the Will and the Spanish Wills Registry**

Abogado	Lawyer or solicitor
Abuelo / Abuela	Grandfather / Grandmother
Aceptación de herencia	Acceptance of inheritance / probate
Apostilla	Apostille (at Foreign & Commonwealth Office)
Asesor fiscal	Tax consultant
Ayuntamiento	Town Hall
Beneficiario	Beneficiary / Heir
Comunidad de Propietarios	Community of owners / Residents Association
Declaración de obra nueva	Declaration of new building work (At the Notary)
Difunto	The deceased
Domicilio	Residence
Entierro	Funeral
Escritura	Title Deeds
Funeraria	Funeral Directors
Hacienda	Tax Office
Herederos forzosos	Forced Heirs
Herencia	Inheritance
Hija	Daughter
Hijo	Son
Hijos	Children
IBI (Impuesto Sobre Bienes Inmuebles)	Council Tax
Impuesto	Tax
Inmobiliaria	Estate Agency
IVA (Impuesto Valor Añadido)	VAT (Value Added Tax)

....useful terms

Jurisdicción	Jurisdiction
Llave	Key
Ley	Law
Licencia	Licence
Luz	Light (but often refers to electricity)
Madre	Mother
Muerte	Death
NIE (Numero de Identificación de Extranjeros)	Foreigner's Identification Number
Nota Simple	Land Registry Search
Notario	Notary Public
Padre	Father
Poder	Power of Attorney
Póliza de seguros	Insurance policy
Prescripción	Limitation period (for paying taxes)
Propiedad	Property
Registro de actos de ultima voluntad	Wills registry
Registro de propiedad	Land Registry
Renuncia	Renounce
Residente / Residencia	Resident / Residence
Sucesiones	Inheritance / Succession
Sucesión intestada	Intestate inheritance
Sociedad	Company
Terreno	Plot
Testamento	Will
Usufructo	Life interest
Valor Catastral	Official value of the property

Spanish lawyers

We have an experienced Spanish legal team comprising Spanish lawyers and English lawyers who have studied Spanish law.

We are Solicitors

We are a UK based firm of Solicitors regulated by the Solicitors Regulation Authority and who specialise in international legal issues.

We understand both sets of laws

Because we understand both sets of laws we understand the difficulties that come when two sets of laws meet.. This is particularly important when it comes to issues involving ownership, taxation and inheritance.

We are members of AIPP

The Association of International Property Professionals was set up to improve standards of professionalism in a largely unregulated overseas property market.

Experience

Our Spanish team has many years of experience dealing with a whole range of legal issues with Spain.

We speak your language

You need a lawyer who can speak your own language. More importantly you need somebody who can explain and discuss often complicated issues in terms that you understand.

Independence

We are independent. We are not allowed to act for the buyer and the seller at the same time. We are not linked with any Development Companies, Builders or Estate Agents

Contacts

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