

# Probate in Spain



When a loved one who possesses assets in Spain passes away, it can be a very upsetting time for those left behind. Quite apart from the obvious distress, it is unlikely that the family have a clear idea of what they need to do to or who to trust to help them to pass these foreign assets onto their rightful new owners.

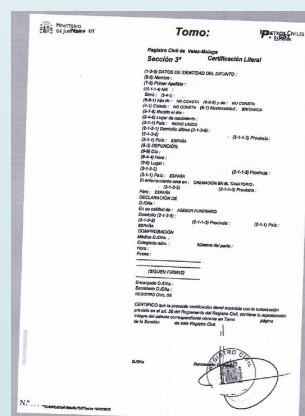
Perhaps the deceased owned one or more properties which he or she lived in, used as a holiday home or even rented out. There is likely to be at least one bank account and perhaps a vehicle too.

The process for administering the handing over of an estate is quite different from that which people may have experienced in the UK. All official processes, from those which take place at the Notary to those of the Tax Office and Property Registry must be carried out in the right order.

It is advisable to seek professional help to ensure that everything is passed legally to the rightful heirs and that the process is carried out within the prescribed time in order to avoid incurring penalties

## The death certificate – certificado de defunción

- In Spain, the funeral director will normally supply as many death certificates – *certificado de defunción* - as you wish.
- Copy certificates can also be obtained from the civil registry in Spain.
- If the deceased passed away **outside Spain**, you will need to supply a death certificate from that country.
- If the death occurred outside the European Union e.g. in the UK, you will need to have the certificate validated or “legalised” with an **Apostille of the Hague** before it can be presented in Spain, and it will need to be translated to Spanish.



Spanish death certificate

The first step is to find out what the last wishes of the deceased were:  
Is there a Spanish Will?

## Certificado de últimas voluntades

When someone who has assets in Spain passes away, whether the death occurs in Spain or elsewhere, the first step is to apply to the registry for a document known as “*certificado de últimas voluntades*” (last wishes) which is the document which confirms whether or not the deceased had made a Spanish Will, and if so, at which Notary the last Will is held.

To apply for this document, we need to present the original death certificate of the deceased.

There are different processes to complete if there is no Spanish Will.

There may be a Will made in another country, or if there is no Will at all, the deceased is deemed to have died intestate.



## Wills in Spain

In Spain, a Will is made at the office of a **Notary**, who keeps the original document and notifies its existence to a national registry.

Because Wills are registered, it is a straightforward process to find out whether the deceased made a Spanish Will or not, and which Notary holds the latest Will made by the deceased.

(It is highly unusual for a Will which has not been signed before a Notary to be accepted as a person's last wishes.)



The Notary is a professional within the Spanish legal system whose main function is to certify and authenticate Spanish documents such as contracts, Wills, Powers of Attorney and deeds.

A Notary is a trusted third party who works on behalf of the public good.

## Did the deceased have a valid Will?

If the deceased had made a Spanish Will, it will be administered according to their wishes.



All Wills made before a Notary are registered in the central registry in Madrid, and a request is made for the Ultimas Voluntades (last wishes) certificate which shows:

Which Notary holds the last Will of the deceased,

or

That the deceased had not made a Spanish Will.

The heirs or their lawyers contact the Notary who holds the last Will, and request an authorised copy of it.

All the heirs and beneficiaries must be identified, and then the administration of the estate can commence.



## Intestacy in Spain

If a person has no Will which is valid in Spain, the division of the assets will occur as set out in the Spanish Civil Code if it is determined that Spanish law should apply. BUT if the deceased was not a resident of Spain, the law of his or her nationality may apply.

According to the Spanish Civil Code, assets pass to the children of the deceased in the first instance. The list of beneficiaries is as follows:

If there are no children, the assets pass to the grandchildren.

If there are no descendants (children or grandchildren), assets pass to the ascendants (parents of the deceased).

If there are no descendants or ascendants, assets pass to the spouse.

If there is no spouse, assets pass to siblings and nieces and nephews of the deceased.

You will notice that the surviving spouse is quite far down the list, and it is essential to understand that unlike in the UK, surviving spouses do not automatically inherit all or even any of their late partner's estate.

The Notary must make a Declaration of Heirs in these cases. The heirs must prove their relationship to the deceased by submitting birth and marriage certificates for example.

## When the Law of another country will govern how the estate is distributed

When a person who is not a resident of Spain dies intestate, the estate will not be distributed according to the Spanish Civil Code.

Instead, the law of succession of that person's nationality will apply.

The Spanish Notary is not qualified to make any judgment on any non-Spanish law of succession, and will ask for a Statement of Law from a professional in the country concerned.

He or she will then follow the rules as laid out in that Statement of Law to determine who the heirs will be.



## Statement of Law

UK Notary Publics are notoriously unwilling to make any clear statement of law which actually names the heirs, and often use very woolly language. Sometimes these statements are so general and written in such vague terms that the Spanish Notary can refuse to use them.

Obtaining such a statement can be quite costly, and if from the UK or any other non-EU country, must be legalised with the Apostille of the Hague or equivalent and then sworn translated to Spanish, adding additional expense. So it is crucial that the Statement serves its purpose.

Your lawyers should have experience of acquiring a Statement of Law which is very clear and which identifies the heirs specifically. The best Statements of Law actually name the heirs, so rather than stating, for example "daughters of the deceased", a good Statement of Law will say "the two daughters of the deceased, namely Susanna Bloggs and Joanne Smith née Bloggs".

In such a case, the Notary may well decide that it is not necessary to make a Declaration of Heirs.

This can speed things up considerably because firstly the Declaration of Heirs must be made in front of two independent witnesses, and secondly because the Deed of Inheritance can not be signed until at least a month has passed since the Declaration of Heirs was made.



### Case Study: Jacqui and Charlotte

*Graham passed away suddenly, leaving a house in Spain which he had used for holidays. Unfortunately he had not made any Will either in Spain or the UK where he lived.*

*Graham was divorced, so under English Law his daughters Jacqui and Charlotte would inherit his Spanish property.*

*With our help, both ladies attended a zoom appointment with an English Notary Public who wrote a clear and comprehensive Statement of English Law. The statement clearly explained that, since Graham was divorced and had not remarried, under the law of his nationality, Graham's assets would pass to his two daughters, whom the Notary clearly named in the statement.*

*The Spanish Notary was satisfied that due to the clarity of the Statement, no Declaration of Heirs was required. This meant that the Inheritance Deed could be signed without delay.*

# When is a foreign Will accepted?

If the deceased was a Spanish resident and had not made a Spanish Will, but there is a **Will in another country** which makes provision for all worldwide assets or was clearly intended to include the Spanish estate, then this Will may be accepted by the Notary and the intestacy law in Spain will not be invoked.

**A Foreign Will** can be accepted in Spain only if it is:

- The original or a Court Certified Copy of the Will
- With Apostille of the Hague (if from the UK or other non-EU country)
- Translated to Spanish by an official sworn translator
- Accompanied by the original UK Grant of Probate, also with Apostille and sworn translation

Relying on a foreign Will in Spain is a far more complicated matter than using a Spanish Will.

Until Probate has been Granted in the UK (or equivalent in other countries), the Will cannot be administered in Spain.

Sometimes the value of the estate is relatively low, and Probate need not be sought in the UK. In that case, a Statement of English Law may have to be made, or Letters of Administration ordered.

*The ideal situation for anyone who has assets in more than one country (jurisdiction) is to make one Will in each country.*

## Case Study: Martin and Sue

*Martin and Sue are Spanish residents and own a house together on the Costa del Sol. They also have an apartment in the UK which one of their daughter lives in.*

*They have made a UK Will leaving the apartment in the UK to their daughter and a Spanish Will leaving their Spanish assets to each other.*



## Apostille of the Hague

The Apostille is actually a certificate which is normally affixed to the back of the certificate or document that it refers to. Some countries use a stamp rather than a certificate.

The Apostille verifies that the certificate is authentic. This means that a foreign document can be presented as genuine and valid in another country.

The Apostille is used to authenticate certificates such as birth, marriage and death certificates, police records such as ACRO certificates, doctors' letters, Court documents, and documents produced by Notaries such as Powers of Attorney.

APOSTILLE (Convention de La Haye du 5 octobre 1961)	
1. Country: Pays / País:	United Kingdom of Great Britain and Northern Ireland
This public document Le présent acte public / El presente documento público	
2. Has been signed by a été signé par ha sido firmado por	
3. Acting in the capacity of agissant en qualité de quien actúa en calidad de	
4. Bears the seal / stamp of est revêtu du sceau / timbre de y está revestido del sello / timbre de	
Certified Attesté / Certificado	
5. at à / en	London
6. the le / el día	
7. by par / por	Her Majesty's Principal Secretary of State for Foreign, Commonwealth and Development Affairs
8. Number sous no / bajo el número	APQ-3119659
9. Seal / stamp Sceau / timbre Sello / timbre	10. Signature Signature Firma

# Relying on a British Will

Many people who own assets in Spain do not make a Will in Spain.

## **Downsides of relying on a British Will:**

*We often meet people who are stuck in limbo because they are the beneficiaries of a British Will which cannot be administered in Spain until Probate has been granted in the UK.*

*They must obtain the original British Will or court certified copy in Spain with Apostille and sworn translation. These can take weeks to acquire and there are costs involved.*

*While Apostille and translation are fairly quick processes, no progress can be made in Spain until the Grant of Probate has been made in the UK.*

*In many cases the Grant of Probate may take several months to obtain. During that time, no assets (including vehicles) can be sold or passed to the heirs. Everything stays in limbo while the heirs wait for Probate to be granted in the UK.*

*Another unwelcome surprise for many is that there are important tax implications; in Spain, the heir has a maximum of six months to declare an inheritance and pay any tax owing for it. To declare an inheritance governed by a British Will, the UK Grant of Probate must be sent in to the AEAT (tax office) for the tax to be calculated.*

*If the Grant of Probate is not made and presented within the six months, the heir is liable to pay a fine which will increase as time passes. This is particularly relevant in certain regions of Spain where inheritance tax is higher, and in situations where the beneficiary is not a close blood relative of the deceased.*

### Case Study:

Janette and her husband Richard resided in Spain where they had bought a house together. Richard also had two cars. They made British Wills, mistakenly thinking that they were not permitted by the Spanish Civil Code to leave their assets to one other in Spanish Wills.

When Richard passed away unexpectedly, Janette discovered that she could not sell Richard's cars or put their house on the market until the long process of obtaining the Grant of Probate in the UK had been completed. In addition, she had to present the original UK Will in Spain and to arrange for these documents to receive the Apostille of the Hague and to be officially translated to Spanish.

Once we had the UK Will and Probate, the process in Spain took less than 3 months, but the delays caused by having to wait for UK Probate meant that 14 months had passed from Richard's death before she could finally sell the cars and put her house up for sale. This caused her considerable distress.



# Accepting an inheritance

In Spain the beneficiaries of a Will - or heirs as they are known (“herederos”) - must claim their inheritance.

In order to claim an inheritance and own property, the heirs must obtain an NIE which is a unique identification number for foreigners in Spain.

The value of the assets must be calculated in order to make a declaration to the tax authority, and to calculate any taxes owed by the heirs.

The inheritance must be declared to **AEAT (“Hacienda”)**, the Spanish tax authority within 6 months of the death in order to avoid additional financial penalties.

The **deed of inheritance** is signed at the Notary and the assets are then registered in the name (s) of the heir(s).

It is also possible to renounce an inheritance, for example if it is discovered that the value of the assets is lower than the debts of the deceased.

## NIE number – what is it?

- Every adult in Spain needs to have an ID number.
- Spaniards have a DNI and foreigners have a **NIE (*número de identificación de extranjero* - foreigner’s identity number)**
- It is not possible to purchase or own property or a vehicle without an NIE or DNI.
- This unique number will be used as a tax identifier, and it appears on the deeds of any property and the documents of any vehicles they own.
- If you are going to inherit property of any type in Spain, you will need to obtain an NIE number.
- You can apply for an NIE at the National Police Station (*Comisaría*) or at the Spanish Consulate in your own country.
- However the simplest solution is for **your lawyer to obtain a NIE on your behalf.**



NIE certificate

# Steps in accepting an inheritance



- The **Death Certificate** is requested. If the deceased passed away outside Spain, an **original death certificate** must be presented; this must be translated to Spanish and, if from outside the EU, authenticated by Apostille.
- The **Certificate of “Last Wishes”** (Ultimas Voluntades) is ordered: the **location of the last Will of the deceased** is identified – if in Spain, at which Notary’s office it is kept.
- One or more **official copies of the last Will** must be ordered from that particular Notary.
- If there is **no Will in Spain**, either a Will from another country is presented or the deceased is declared to have died intestate.
- Identification of **the heirs** – either from the Will, or according to the Law.
- Inventory of **assets** is made:
  - Properties
  - Bank accounts
  - Vehicles
  - Shares and investments
  - Life insurance policies
- Valuation of the estate.
- NIE numbers assigned to the heirs.
- For Intestate cases, a **Declaration of Heirs** is signed before witnesses (or Statement of foreign law may be sufficient). One month must elapse from the Declaration of Heirs to the signing of the Deed of Inheritance.
- Signing of the **deed of inheritance**.
- Inheritance tax calculated and paid to AEAT
- Property transferred to the heirs and registered in the property registry
- Bank account opened in the name(s) of the heir(s)
- Vehicles transferred to the names of the heirs or to their new owners if being sold





- A Power of Attorney is required from the UK

We will find more than one Notary in your local area and explain the requirements to them. You pay the Notary directly.

- The Power of Attorney needs to be made in English and translated to Spanish

Most UK, US and Irish Notaries are happy to let you sign a bilingual power of attorney. This means that we can send them a POA in English and Spanish and the POA does not have to be translated from English to Spanish.

- Sworn translations are required – what are they and how do I get them?

Sworn translations are official translations made by translators who are registered with the Spanish Government. They can be very expensive if made outside Spain. We can get sworn translations made within 24 hours if necessary and at prices less than half of what you would pay in the UK, Ireland or the US.

- You require a Statement of Law from the UK or elsewhere

We can liaise with a Notary who can help, and explain exactly what is required.

## Obstacles and unexpected issues

Frustrating delays can ensue due to a number of factors:

- The family do not know how to get a Spanish Death Certificate.

We can obtain a Spanish death certificate within 48-72 hours.

- The “Ultimas Voluntades” (last wishes) certificate can take more than 2 months to arrive.

We can order this certificate and have it back to us within 48 to 72 hours guaranteed.

- The last Will is at Notary’s office which the heirs cannot travel to easily.

A Notary can order the Will from a different Notary.

- Information relating to property owned by the deceased is not held by the family.

It is a quick process to order what is called a Nota Simple – this is a document which demonstrates who is the registered owner of a property according to the Property Register.

- In some cases, properties were not registered correctly and new deeds must be ordered.

We can do this on your behalf. And if there are any irregularities, our surveyor can carry out all of the work needed in such cases.



Vehicle ownership document

A vehicle registered to the deceased cannot be transferred to a new owner until the Will has been executed and the deed of inheritance signed.

In Spain the heirs receive their inheritance GROSS and the tax is owed by the individual heir according to:

1. The proximity of the family relationship between the heir and the deceased
2. The existing wealth of the heir

In the UK, inheritances are received NETT (after tax has already been paid)

# Inheritance Tax in Spain

Inheritance tax applies in Spain if the heirs are resident in Spain and/or if the inheritance is a Spanish fixed asset.

The tax owed will depend on several factors:

1. The **relationship** of the heir or beneficiary to the deceased; the closer the blood relationship, the lower the tax imposed.
2. Which **autonomous community** the deceased held assets in. Some regions have far higher inheritance tax than others. Andalucía for example has become a very low IHT community in recent years.
3. When the tax is paid; the regulations stipulate that IHT must be paid **within 6 months** of the death occurring. Later payment will incur fines and interest charges.

*There are 4 tax bands for beneficiaries; the least IHT (or even zero, depending on the region) will be paid by those who fall into band 1, and rises according to the "distance" between the deceased and the beneficiary. Those in band 4 pay the most inheritance tax:*

1. *Children and adopted children of the deceased*
2. *Grandchildren and parents of the deceased, surviving spouse (or civil partner in some regions)*
3. *Siblings, aunts, uncles, nephews and nieces*
4. *Cousins, all other relatives, and those who are unrelated to the deceased.*

*Note that there may be special allowances for heirs who have disabilities or where the deceased was registered as disabled.*

*It is essential that you ask a tax specialist to advise you on the specific IHT applicable in any particular region of Spain.*

The Spanish tax authority AEAT, known as Hacienda



# Usufruct – the right to live in a property

As we have already discovered, in Spain people normally have to leave their assets to their children. The Civil Code obliges this.

What usually takes place is that when for example the father passes away, the 50% of the family property that he owned will pass directly to the children, and his surviving spouse will retain her 50% of the property. She then has the right to remain living at the property until she passes away (or alternative arrangements are made).

## Usufruct:

This right to make use of all of the property while only owning a percentage of it is called a **usufruct**.

While being very common in Spain, this would not be a situation that a British or Irish person would generally expect or have intended to happen. However, if that person dies intestate and Spanish inheritance law is applied to the assets, they will not pass automatically to the spouse, and a usufruct may well be the result.

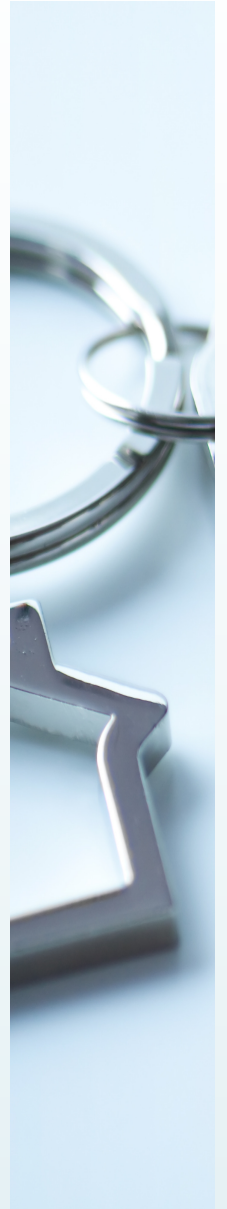
It is a fact that many of the people we meet have re-married and we often encounter situations in which both spouses have children from previous marriages. It can be quite a shock for a widow or widower to discover that the other half of his or her home is now owned by the step-children.

## Potential conflicts:

While the beneficiary of the usufruct is responsible for the day to day costs of running the property, such as electricity and water, the owners of the property are responsible (jointly) for repairs and maintenance.

These situations can be confusing and very stressful, especially if they are unexpected or if for example the relationship between a widow(er) and the step-children is not particularly good.

This situation could of course have been avoided had a Spanish Will which clearly set out the wishes of the deceased been in place. However, once someone has passed away, it is impossible to turn back the clock. At that point it is essential to take legal advice to ascertain and fully understand the implications of a usufruct and what the **rights, responsibilities and obligations** of each party are going to be.



# Making a Will in Spain

*The Spanish Civil Code governs how residents of Spain may bequeath their assets. It obliges the testator (the person making the Will) to leave the majority of their assets to close family in a system known as “forced heirship”.*

The **European Succession Regulation (650/2012)** known as *Brussels IV* states that the law applicable to the estate of the deceased is that of their country of habitual residence. This means that any resident of Spain is also be forced to leave their assets in a way which might go against their wishes.

However, the UK, Ireland and Denmark opted out of the provisions of this Regulation, so nationals of these countries are exempt from having to follow the Spanish Civil Code rules.

Therefore nationals of the UK and the Republic of Ireland (and Denmark), whether they are residents of Spain or not, may choose to make their Spanish Will **under the law of their country of origin**.

This means that they are able to enjoy the benefit of **free disposition** (the right to leave assets to whoever you wish).



## To bear in mind:

- If you are British, Irish or Danish you can take advantage of “free disposition” to avoid the forced heirship rules of the Spanish Civil Code.
- This means that you can leave your assets to whoever you wish.
- It is worth considering the tax implications on your beneficiaries before you decide to make your Spanish Will.
- Your Will should refer clearly to the fact that it is made under your national law if you want to enjoy the benefits of free disposition.

If you have recently lost a loved one who owned property or other assets in Spain,

Or would like to get some advice on estate planning,

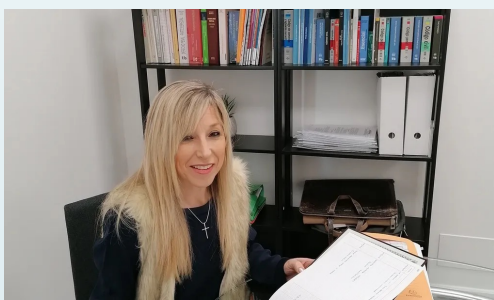
we hope that you have found this guide useful.



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