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Wills & Probate for Expats in Spain

Who can inherit my property?

In this article “property” refers to immovable property such as real estate.

With a UK Will its possible to choose who you wish to leave your property too but there are some special considerations when thinking about leaving property to a child or a spouse/partner.

Leaving a property to children

A child is not able to inherit under your Will until they are legally old enough to receive the funds. Until that point, their inheritance is looked after by whoever you appoint to keep the money safe (‘your Trustees’). When money or property is looked after for some else’s benefit, this is a Trust. Trusts are often established in Wills though advice and careful consideration must be given.

A Trust arises when a person under 18 inherits under a Will. You can express in your Will that you do not want a minor beneficiary to receive their inheritance until they are older such as aged 21 or 25. Until that age is reached, their inheritance would be held in a Trust.

Leaving property to a Spouse or partner

Couples will usually own a property as a “joint owner” – but what does that mean?

There are two different ways of jointly owning a home:

- beneficial joint tenancies (the most common type of holding)
- tenancies in common.

Which are you?

If the partners were *beneficial joint tenants* at the time of the death, then when the first partner dies, the surviving partner will automatically inherit the other partner's share of the property.

However, if the partners are *tenants in common*, the surviving partner does not automatically inherit the other person's share.

It is important to speak with an expert about this before making your Will.

What makes it more complicated is that you can change from being joint tenants to tenants in common at any time during your ownership of the property; this is known as “severing” the joint tenancy.

It is often advisable to “sever” a joint tenancy perhaps at the end of a relationship, this prevents the other owner automatically inheriting the whole of the property should one of you suddenly die.

Under a joint tenancy, you both own ALL of the property known as “joint and several ownership” – it means that you must agree to sell or re mortgage.

However, if that joint tenancy is severed - then as tenants in common you each own a distinct share in the property and that share can be left in a Will to whomever you choose.

It's important to understand the distinction when making a Will and it's a point that we always cover when taking your instructions.