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Wills & Probate for Expats

Your Guide to Spanish Wills and Probate

What is a last will and testament?

The last will and testament is ‘proof’ of someone’s wishes and can include gifts, legacies and the gifting of properties. If you do not make a last will and testament, **intestacy laws** may come into effect and your estate may be distributed in ways you do not agree with.

Should you write a ‘foreign will’?

It’s highly recommended that you draft a will in the jurisdiction where assets are held to make sure it complies with their inheritance laws, which can differ from country to country. Therefore, if you have assets in Spain, it is recommended that you draft and register a separate will in accordance with Spanish inheritance laws to deal solely with any assets you may have in Spain. This ensures the handling of your estate is kept simple and won’t interfere with other assets held in other countries.

Should I also have an English Will?

Absolutely, you should have a separate Will in each country where you have property such as real estate, vehicles, bank accounts, shares etc.

How do you write a will in Spain?

To draft a will in Spain, the best course of action is to get specialist advice from a lawyer in Spain who is experienced in will drafting. The Lawyer writes the Will and it is then sworn by you before a Notary.

To make a will in Spain you must be over 14 years old, have your wishes in writing and it must be signed and certified before a ‘notary’. It will then be registered at the central registry in Madrid, known as ‘*Registro General de Actos de Última Voluntad*’ (Central Registry of Wills).

There are three types of Will in Spain:

- An **open will**, a *testamento abierto*) – this is the most secure way to make a will in Spain as it contains your wishes but is written by a notary who will be familiar with Spanish laws. It's called an 'open will' as the notary knows about it, but it's not seen by other people.
- A **closed will**, *testamento cerrado* – this is where the will is given to the notary, but the notary is not able to see it. This can cause issues if you're not completely familiar with Spanish regulations.
- A **holographic will**, *testamento olográfico* – this is where the will is written by hand. It cannot be done on a computer and it must be free of any amendments/crossing outs. Holographic wills can cause problems as they are often lost and need to be proved as authentic once found.

Remember when writing a will that inheritance tax on any Spanish property is payable to the relevant tax authorities in Spain, subject to any exemptions and reliefs that may be applicable to the estate.

What are the succession laws in Spain?

Spanish succession law requires that a certain amount of the estate is left to children. This is often called 'forced heirship' and descendants must inherit **two-thirds** of their parents' inheritance:

- The **first third** must be distributed **equally** to all children or other descendants.
- The **second third** can be allocated **unequally** among children and descendants. For example, if there are four children, one can receive all this amount and three can receive nothing.
- The **final third** can be allocated to whoever the deceased wishes.

If there are no descendants, the parents or any other ascendants will be considered instead.

What about Brexit? (see our PDF Guide: "Wills after Brexit")

Until Brexit it was the case that Brits living in Spain could follow the succession law of the UK, if they wished. For UK citizens, it meant that if you wished for UK law to be applied to your Spanish will, then EU Succession Regulation 650/2012 (known as "Brussels IV") stated that you must declare this in your Spanish will

The UK is no longer in the EU but the EU's advice is that Brits in Spain can still take advantage of Brussel IV so you can continue to opt for UK succession laws when deciding who will inherit your property in Spain.

What happens when someone dies without a will in Spain?

If you don't draft a legally valid will in Spain, then your assets will be administered either through UK or Spanish intestacy laws.

Which intestacy law is applied largely depends on your 'habitual residence' at the time of your death.

Your habitual residence can be more complicated than it sounds as it's based on many factors, not simply where you currently live.

Therefore, using a lawyer with experience in cross-border succession is recommended wherever possible.

Once it is known which laws applies and who is entitled to inherit, the following steps usually occur in Spain:

1. A '*declaration of heirs*' document is signed. This is a document setting out the estate in Spain along with the persons entitled, stating their relationship to the deceased. Evidence must be submitted in support of this declaration.
2. A further document, '*acceptance of inheritance Spain*', must then be signed before a notary. Reference will be made to the '*declaration of heirs*', in the case of an intestacy.
3. As soon as the '*acceptance of inheritance Spain*' document is signed, any inheritance tax which is payable will become due **immediately**. Once the inheritance tax has been settled and the document has been stamped by the Spanish tax authorities, steps can be taken to deal with the administration of the estate, such as transferring legal titles of properties into the beneficiaries' names.

How do you apply for probate in Spain?

In order to obtain 'probate' in Spain, there is a lengthy and often complex process.

You'll need a local lawyer for this and it's usual to grant a **power of attorney** to their lawyer who can act on their behalf. This is useful for an executor/beneficiary who does not reside in Spain, as it will ensure the whole process can be carried out correctly by the appointed lawyer.

Any death certificates that are not in Spanish may be required to be 'legalised' by the **Foreign and Commonwealth Office**. It may also need to be translated by an official translator. The legalised death certificate will then need to be shown to the Central Registry of Wills in Madrid.

How do you search for a will in Spain?

A will search be carried out at the Central Registry of Wills in Madrid to confirm the existence or absence of a Spanish will.

How is a deceased's estate distributed in Spain?

Once the above steps have been taken, the next steps are:

- collating documentation and asset relating to the estate
- signing a Spanish inheritance deed in front of a notary in Spain
- settling any inheritance and property taxes
- transferring property titles
- releasing funds from various bank accounts and distributing accordingly

Drop us a line if you're thinking of making a Will or updating a previous one.
