

## Making a Spanish Will - Unquestionable usefulness

Although it is not compulsory to make a Spanish Will, we would strongly recommend that you do so. A Spanish Will usually makes it much quicker and easier to deal with your affairs in Spain. If you rely on your English Will no action can be taken until the probate of your English estate has been dealt with. This can take some time, particularly if your English Will or affairs are complicated.

Without a Spanish Will, the inheritance process can take around one and half to two years to sort out. The Spanish authorities impose tax penalties if matters are not dealt with quickly.

Under Spanish law your share of the property you own jointly with somebody else does not pass automatically to that other person on your death. It will be disposed of either in accordance with your Will or, if there is no Will, under the laws relating to intestacy.

## Key information on the various types of Spanish will, with an overview of the inheritance implications for a foreigner and their family resident in Spain...

All adults should make a will (*testamento*), irrespective of how large or small their assets (each spouse should make a separate will). If a foreigner dies without a will (intestate) in Spain, their estate may be automatically disposed of under Spanish law and the law regarding compulsory heirs applied.

A foreigner resident in Spain is usually permitted to dispose of their Spanish assets according to the law of their home country. A foreigner who has lived in Spain for a long time may find it necessary to create a legal domicile in their home country for the purpose of making a will.

A will made by a foreigner regarding Spanish assets isn't invalidated because it doesn't bequeath property in accordance with Spanish law, as Spanish law isn't usually applied to foreigners and the disposal of property (buildings or land) in Spain is governed by the law of the deceased's home country unless there is a dispute among the beneficiaries, in which case Spanish law is applied.

## Related Information

### Should I have a Spanish Will?

If you own property, yes. It is a slow and expensive process to get your foreign will recognised in Spain. For your heirs to get your Spanish property transferred to their names, the process is much simpler if there's a Spanish will. If there is no Spanish will

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registered at the *Registro de Actos de Ultima Voluntad*, then in the worst case, your property will pass to the local and regional government.

## **Is Spanish law applicable to my property?**

When a foreign property owner dies with no will (intestate), Spanish law must be applied to their Spanish assets as a result. Be aware that this differs from countries such as the UK. The deceased in Spain must leave two thirds of their estate to their compulsory heirs.

If however the property owner makes a will, they can bequeath their Spanish assets to anyone they please as long as the laws of their home country permit this. The Spanish Civil Code states that the assets that the foreign deceased had in Spain at the time of their death will be governed not by Spanish law but by their own national law.

## **What assets does my Spanish will cover?**

The Spanish will covers those assets located in Spain. You should have a foreign will to cover any assets that you have in other countries. You must make sure that there are no legal conflicts between the application of your Spanish will and your will abroad.

## **What does your service include?**

Once you discuss with us the full details of your intentions, we draw up the will, following your wishes to the extent possible, while adhering to requirements of Spanish law regarding wills. To be valid, this will needs to be notarized.

We will need you to:

- Provide the data for you, your heirs, and anyone else mentioned in your will.
- Choose a notary (or choose the location in Spain most convenient to you, and we will contact a notary there).
- Sign the will at the notary's office.

A copy will be given to you. The original will be kept at the notary's office (or successor's office), thus avoiding risk of loss or theft. In addition, the notary sends a report to the Ministry of Justice, simply notifying the Ministry that the will has been made, without disclosing the contents. That way, it can be known which is the deceased's latest official will. The record is kept secret until the death of the testator. At that time, we can know what was the deceased's last official will, thus avoiding possible errors that could later prove serious.

## **What if I want to change the contents of the will later on?**

To change the contents requires a notary, so you would need to go through the same process.

**As a couple, can we have a joint will made?**

No. You need a will done for each of you.

**What happens if the deceased has not left a will?**

When the deceased has not left a will, the Spanish Law of Succession determines who shall inherit in the following order:

1. The descendants of the deceased inherit in equal shares.
2. If there are no descendants, the spouse inherits.
3. If there is no spouse, any brothers or sisters of the deceased inherit in equal shares. If any brother or sister of the deceased has predeceased and left children, the children inherit their parent's share in equal shares.
4. If there are no brothers or sisters, nephews or nieces, then cousins, if any, inherit.
5. Finally, if none of the above family members exist, then the deceased's estate is inherited by the Spanish Government.

## **Types of Spanish wills**

### **Open Will**

This is the usual form of will for most people in Spain. It is made before a Notary, who keeps the original document in his file. The Notary will send notification of the will to the Central Registry of Spanish Wills in Madrid. It is the simple, quick and cheapest at the end of all the other types. This is the type We advise to complete.

### **Holographic Will**

This type of will is handwritten entirely by the testator. It must be signed and dated on each page by the testator. It must be verified as genuine before a judge. The deceased's closest relatives must verify the deceased's handwriting. Once this has been done, the judge will enforce the provisions of the will.

### **Closed Will**

The details of your will are kept secret by placing them in an envelope. The testator must then declare the following before a Notary:

- that the provisions of the will are contained in the envelope.
- whether it has been written by a third party or by the testator.
- whether it has been signed by a third party or by the testator.

The Notary then seals the envelope and signs it. It is then filed by the Notary who informs the Central Registry of Spanish Wills.

### **The procedure for dealing with property of non-residents after death**

The first step is to establish the existence of a Spanish will. The Central Registry of Spanish Wills in Madrid should be contacted. If a will exists, the deceased's death certificate will be required in order to apply for a legal copy of the Spanish will.

A valuation of the deceased's estate in Spain will also be required.

If there is a Spanish will, then proceed with the administration of the estate in Spain. Only a notarised and apostilled copy of the death certificate is required.

If there is only a foreign will or intestacy, the following documents will have to be translated, notarised and apostilled, before the administration of the estate in Spain can proceed:

- The death certificate
- The foreign will
- Grant of Representation or equivalent
- It may be necessary to provide a Certificate of Law to explain the law of intestacy in a particular country.

The legal formalities of transferring property to beneficiaries in Spain are completed before a Spanish Notary. The Notary ensures, for example, that the beneficiaries are entitled to the deceased's assets.

### **Inheritance tax for non-residents**

Beneficiaries who do not have their usual residence in Spain are liable to this tax. Residents in Spain are also liable for this tax when the deceased person did not have their habitual residence in Spain.

The filing deadline for the inheritance tax return is 6 months from the date of death. Upon submission of the Form 650, the Tax Agency will calculate the tax payable. Or, the taxpayer can opt for self-assessment, submitting the simplified Form 652. The forms can be downloaded from the [Tax Agency website](#).

If a taxpayer who is required to make payment does not have a [NIF](#), they must take the following steps:

**Non-resident foreign national taxpayers** must apply for a [NIE](#), either from a police station that processes foreign nationals or from a Tax Agency office. The documents required to apply are:

An authenticated photocopy of the passport of the taxpayer (the beneficiary).

A photocopy of the Deeds of Acceptance of the Inheritance.

A NIE application form.

In the event of a taxpayer acting through a representative, the authorisation or power of attorney.

**Non-resident Spanish taxpayers** must apply for a [NIF](#) from a Tax Agency office by presenting the following:

A Certificate from the Spanish Consulate in the country where you reside, confirming that you are registered on their Registry of Spanish citizens.

An authenticated photocopy of the consular passport of the taxpayer (the beneficiary).