

The Spanish System of Inheritance Law

The Spanish inheritance law is similar to the Napoleonic inheritance laws in France, with the emphasis on protecting the rights of the deceased's direct descendants. The legal system and the way the taxes are calculated are very different from the British system. If you already own or are seeking to own a property in Spain, take the time to speak to a lawyer and a qualified financial advisor. This ensures that your assets will be in order, and the correct provisions have been made so that your inheritor(s) pass through the process of probate easily.

Here are some of the key points to Spanish Inheritance law that make it so different to the UK:

- There is no automatic inheritance by a wife or other joint owner of the deceased's joint owners share in any property/asset
- A spouse's inheritance will be taxable.
- Children are compulsory heirs under the Spanish law of 'herederos forzosos'
- Only one third of the estate may be disposed of freely, one third must be spread between the children in equal parts and the last third (if property) is subject to an automatic life interest in favour of the spouse. Upon his/her death this share is redistributed amongst the children according to the provisions made in the will.
- If the assets inherited include a property then the surviving spouse holds a usufruct over the property and the children can not dispose of it freely until he/she dies.

The most important consideration is that under Spanish law & contrary to English law, you are not free to dispose of your assets as you like. Certain groups of dependants are protected and have priority rights and if they are not reflected in the Will, then those dependants have the right to challenge.

There is currently confusion as to what may happen in the case of a death of a foreign owner of a Spanish property. British law states that with land and buildings owned abroad, it is the local law which should be referred to. However, Spanish law (Article 9 of the Spanish Civil Code) states that in case of a foreigner's death (resident or non), the foreigners own country's law should be applied in order to decide what should happen to their estate. The only legal requirement is the according inheritance taxes are paid on the assets transferred.

Normally this means the UK Will and Spanish Will (which runs in accordance with it), are used to decide who benefits from the estate. However if one of your principal inheritors (see below) decides to contest the provisions set out in the will they will have a right to challenge in the Spanish courts and they will probably win.

Spanish Succession Law

If a foreigner resident dies in Spain without a will, his/her estate will be distributed according to the Spanish laws of succession, and as of yet the law does not recognize childless

cohabitating couple. This has very tough consequences as highlighted by the following scenario:

A partner dies without a will (UK or Spanish) and the cohabitating couple (unmarried, or gay) have no children and owned a property in Spain jointly. By law the estate is legally entitled to the parents of the deceased and not the other partner.

The Importance of having Spanish Will

Let's assume that you have died and the only Will you have in place covering your assets in Spain is in the UK. Spanish Law will look to the UK document, but your executors will need to check with the Spanish Central Wills Registry in Madrid that no Spanish Will exists. The English Will is then taken as the main document for deciding probate, subject to the rights of the spouse and children. However, before the authorities accept the Will the executors must translate it through an official translator and provide copies of:

- Probate
- Death Certificate
- Birth Certificate
- Marriage Certificate

All of the above documents need to be certified for use in Spain by the Foreign Office with a Hague Apostile stamp.

A Spanish lawyer will also need to be appointed to prepare a certificate to prove to the authorities that the disposals in the Will are lawful and not in breach of the law. If the Will does not follow the Spanish scheme of dispersals then your direct inheritors (children or wife) can mount a legal action on the assets transferred under Spanish legal system, this could cause your intended beneficiaries considerable loss.

If you died as a non resident in Spain then the executors should prepare a Power of Attorney to sign the inheritance documents and pay the associated tax for the beneficiaries. Your beneficiaries would need to collect together the money needed for the taxes and send it to Spain.

As you can see the associated processes are expensive & time consuming and the costs and taxes can start to outweigh proportionally, the value of the remaining estate.

What's the Solution?

Make a Spanish Will and an English Will that runs in accordance and along side it for the assets held in Spain. There are many very good reasons for considering this option. Your executors will be able to avoid a lot of the costs and red tape; you will also be able to make more complex arrangements for the disposal of assets including those not held in Spain. By separating those assets held in Spain under the Spanish Will and those in England under the English Will and by making the correct provisions in the latter, risks of inappropriate disposals are minimized and timeframes are greatly reduced.

If you rely solely on the English Will no action can be taken until the Probate of the English estate has been settled, and with this taking some time you beneficiaries run the risk that the Spanish authorities will impose penalties if the deadlines are missed.

Make sure that if you follow this recommended “dual Will scenario” that your English Will doesn’t conflict with the Spanish one and that your lawyer hasn’t left in standard practice clauses such as one’s that revoke all previous Wills. Otherwise your beneficiaries may be left with a real nightmare to sort out.

How to make a Spanish Will

The process for going about and making a separate Spanish Will for your assets is simple. The lawyer will listen to your wishes and will advise you as to how the Will should read in order to carry out your intentions. The Will is then made out in two columns; one will be Spanish and the other in English. The Will is then checked by the Notary and is signed in his presence and that of three witnesses. This is called an open Will, the notary keeps the original, the lawyer keeps an authorized copy and a notification is sent to the Wills Registry in Madrid. Typical charges in respect of this area are around 300€ plus IVA (VAT) for a couple.